

**LAW**

**ON INTELLECTUAL PROPERTY**

Pursuant to the Intellectual Property Law No.50/2005/QH11 dated November 29, 2005 of the National Assembly, coming into force from July 1, 2006 and being amended by

The Law No.36/2009/QH12 dated June 19, 2009 of the National Assembly on amending a number of articles of the Law on Intellectual Property taking into effect from January 1, 2010.

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended by Resolution 51/2001/QH10 passed by Legislature X of the National Assembly at its 10th Session on 25 December 2001;

*This Law regulates the intellectual property*

**Part I**

**GENERAL PROVISIONS**

**Article 1. Governing scope**

This Law regulates copyrights, copyright-related rights, industrial property rights and plant variety rights; and the protection of such rights.

**Article 2. Applicable entities**

This Law shall apply to Vietnamese organizations and individuals and to foreign organizations and individuals who satisfy the terms and conditions stipulated in this Law and in any international treaty of which the Socialist Republic of Vietnam is a member.

**Article 3. Object matter of intellectual property rights**

1. Objects of copyright including literary, artistic and scientific works; objects of copyright-related rights including performances, audio and video recordings, broadcasts and encrypted program-carrying satellite signals.
2. Objects of industrial property rights comprising inventions, discoveries, industrial designs, layout-designs of semiconductor integrated circuits, trade secrets, marks, trade names and geographical indications.
3. Objects of plant variety rights consisting of propagating materials and harvested materials.

**Article 4. Interpretation of terms**

In this Law, the following terms shall be construed as follows:

1. *Intellectual property rights* means rights of organizations and individuals to intellectual assets, including copyright and copyright-related rights, industrial property rights and plant variety rights.
2. *Copyright* means rights of organizations and individuals to works they have created or own

3. *Copyright-related rights (hereinafter referred to as related rights)* means rights of organizations and individuals to performances, phonograms, video recordings, broadcasts and encrypted program-carrying satellite signals.
4. *Industrial property rights* means rights of organizations and individuals to inventions, discoveries, industrial designs, layout-designs of semiconductor integrated circuits, marks, brand-names, geographical indications and trade secrets they have created or own, and unfair competition prevention rights.
5. *Right to plant varieties* means rights of organizations and individuals to new plant varieties they have chosen to create or detect and develop, and are vested with the ownership rights.
6. *Intellectual property right holder* means an owner of intellectual property rights or an organization or individual that is the transferee of intellectual property rights alienated by the owner.
7. *Work* means a creation of the mind in the literary, artistic or scientific domain by any means or in any form.
8. *Derivative work* means a work which is translated from one language into another, or an adapted, modified, transformed, composite, annotated or selected work.
9. *Published work, phonogram or video recording* means a work, phonogram or video recording which has been permitted for release to the public in a reasonable quantity of copies by the holder of copyright or related rights.
10. *Reproduction* means the making of one or many copies of a work or a phonogram or video recording by any means or in any form, including the backup of such work in an electronic form.
11. *Broadcasting* means the transmission of the sound or image or both of a work, a performance, a phonogram, a video recording or a broadcast to the public by wire or wireless means, including satellite transmission, in such a way that people may access such work from a place and at a time they themselves select.
12. *Invention* means a technical solution in the form of a product or a process which is intended to solve a problem by application of laws of nature.
13. *Industrial design* means a specific appearance of a product embodied by three-dimensional configurations, lines, colors, or a combination of these elements.
14. *Semiconductor integrated circuit* means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections, are integrally formed in or on a piece of semiconductor material and which is intended to perform an electronic function. Integrated circuit is synonymous to IC, microelectronic chip and circuit.
15. *Layout-design of semiconductor integrated circuit (hereinafter referred to as layout- design)* means a spatial disposition of circuit elements and their interconnection in a semiconductor integrated circuit.
16. *Mark* means any sign used to distinguish goods or services of different organizations or individuals.

17. *Collective mark* means a mark used to distinguish goods or services of members from those of non-members of an organization which is the owner of such mark.

18. *Certification mark* means a mark which is authorized by its owner to be used by another organization or individual on the latter's goods or services, for the purpose of certifying the origin, raw materials, materials, mode of manufacture of goods or manner of provision of services, quality, accuracy, safety or other characteristics of goods or services bearing the mark.

19. *Integrated mark* means identical or similar marks registered by the same entity and intended for use on products or services which are of the same type or similar types or interrelated.

20. *Well-known mark* means a mark widely known by consumers throughout the territory of Vietnam.

21. *Brand name* means a designation of an organization or individual in business activities, capable of distinguishing the business entity bearing it from another entity in the same business domain and area.

A business area mentioned in this Clause means a geographical area where a business entity has its partners, customers or earns its reputation.

22. *Geographical indication* means a sign which identifies a product as originating from a specific region, locality, territory or country.

23. *Trade secret* means the information obtained from financial or intellectual investment activities, which has not yet been disclosed and can be used in business.

24. *Plant variety* means a plant community within a single botanical taxonomy of the lowest known rank, which is morphologically uniform and suitable for being propagated unchanged, and can be defined by the expression of phenotypes resulting from a genotype or a combination of given genotypes, and distinguished from any other plant community by the expression of at least one inheritable phenotype.

25. *Protection certificate* means a document granted by a regulatory agency to an organization or individual in order to establish industrial property rights to an invention, industrial design, layout-design, mark or geographical indication; or plant variety rights.

26. *Propagating material* means a plant or a part thereof capable of growing into a new plant for use in reproduction or cultivation.

27. *Harvested material* means a plant or a part thereof obtained from the cultivation of a reproductive material.

## **Article 5. Application of laws**

1. The provisions of the Civil Code shall apply to any civil matter relating to the intellectual property which is not regulated in this Law.

2. Where there are any differences between the provisions on intellectual property in this Law and others, the provisions in this Law shall prevail.

3. Where an international treaty of which the Socialist Republic of Vietnam is a member contains provisions different from those in this Law, the provisions of such international treaty shall prevail.

## **Article 6. Grounds for the generation and establishment of intellectual property rights**

1. Copyright shall arise at the moment a work is created and fixed in a certain material form, irrespective of its content, quality, form, mode and language and irrespective of whether or not such work has been published or registered.
2. Related rights shall arise at the moment a performance, audio and video recording, broadcast or encrypted program-carrying satellite signal are created in a fixed form of expression or shall be exercised without causing loss or damage to copyright.
3. Industrial property rights shall be established as follows:
  - a) Industrial property rights to an invention, industrial design, layout design, mark or geographical indication shall be established on the basis of a decision of the competent authority to grant a protection certificate in accordance with the registration procedures stipulated in this Law or the recognition of international registration under an international treaty of which the Socialist Republic of Vietnam is a member. In the case of a well known mark, industrial property rights shall be established on the basis of its use without reliance on the registration procedures;
  - b) Industrial property rights to a trade name shall be established on the basis of lawful use thereof;
  - c) Industrial property rights to a trade secret shall be established on the basis of lawful acquirement of the trade secret and maintaining confidentiality thereof;
  - d) The right to prevent unfair competition shall be established on the basis of competitive activities in business.
4. Plant variety rights shall be established on the basis of a decision of the competent authority to grant a plant variety protection certificate in accordance with the registration procedures stipulated in this Law.

#### **Article 7. Limitations on intellectual property rights**

1. Intellectual property right-holders may only exercise their rights within the scope and term of protection as stipulated by this Law.
2. The exercise of intellectual property rights must neither prejudice the State and public interests, legitimate rights and interests of other organizations and individuals, nor violate other relevant provisions of law.
3. In the circumstances where the achievement of defense, security, people's livelihood objectives and other interests of the State and society specified in this Law needs to be guaranteed, the State may prohibit or restrict the exercise of intellectual property rights by the holders or compel the licensing by the holders of one or several of their rights to other organizations or individuals under appropriate terms. The limitation on rights to inventions classified as state secrets complies with regulations of the Government."

#### **Article 8. The State's intellectual property policies**

1. Recognize and protect intellectual property rights of organizations and individuals on the basis of harmonizing benefits of intellectual property rights holders and public interests; refuse to protect intellectual property objects which are contrary to social ethics and public order and prejudicial to defense and security.

2. Encourage and promote the creation and utilization of intellectual assets in order to contribute to socio-economic development and improvement of the people's material and spiritual life.
3. Provide financial supports for the receipt and make most use of intellectual property rights to serve the public interests; encourage domestic and overseas organizations and individuals to provide financial aids for creative activities and the protection of intellectual property rights.
4. Prioritize the investment in training and retraining the contingent of cadres, civil servants, public employees and other relevant persons engaged in the protection of intellectual property rights and the research into and application of sciences and technologies to the protection of intellectual property rights.
5. Mobilize social resources for investment in raising the capacity of the system to protect intellectual property rights, thereby meeting requirements of socio-economic development and international economic integration.

#### **Article 9. Right and responsibility of organizations and individuals in the protection of intellectual property rights**

Organizations and individuals shall have the right to take measures permitted by laws to protect their intellectual property rights, and shall be obliged to respect the intellectual property rights of other organizations and individuals in accordance with the provisions of this Law and other relevant laws.

#### **Article 10. Contents of the State administration of intellectual property**

1. 1. Formulate and direct the implementation of strategies and policies on protection of intellectual property rights.
2. Promulgate and adhere to legal instruments on intellectual property.
3. Organize an administrative mechanism for the intellectual property; train and foster staff who gets involved in the intellectual property.
4. Grant and carry out other procedures related to the registration certificates of copyright and related rights, protection certificates for industrial property objects and plant variety protection certificates.
5. Inspect and examine compliance with the law on intellectual property; settle complaints and denunciations, and handle breaches of the law on intellectual property.
6. Organize communication and statistical activities in the intellectual property.
7. Organize and manage intellectual property assessment activities.
8. Educate, and communicate and disseminate knowledge about the intellectual property and the law on intellectual property.
9. Enter into international cooperations on the intellectual property.

#### **Article 11. Responsibility for the State administration of intellectual property**

1. The Government shall exercise uniform State administration of intellectual property.
2. The Ministry of Science and Technology shall be responsible before the Government to lead the co-operation with the Ministry of Culture, Sports and Tourism and the Ministry of

Agriculture and Rural Development to carry out State administration of intellectual property and of industrial property rights.

The Ministry of Culture, Sports and Tourism shall, within the scope of its duties and powers, carry out the State administration of copyright and related rights.

The Ministry of Agriculture and Rural Development shall, within the scope of its duties and powers, carry out the State administration of plant variety rights.

3. Ministries and ministerial-level bodies shall, within the scope of their respective duties and powers, co-ordinate with the Ministry of Science and Technology, the Ministry of Culture, Sports and Tourism, and the Ministry of Agriculture and Rural Development to carry out the State administration of industrial property.

4. People's Committees at all administrative levels shall, within the scope of their authority, carry out the State administration of industrial property at their respective localities.

5. The Government shall provide specific regulations on the powers and responsibilities for the State administration of industrial property of the Ministry of Science and Technology, the Ministry of Culture, Sports and Tourism, the Ministry of Agriculture and Rural Development Science and of People's Committees at all administrative levels.

#### **Article 12. Intellectual property fees and charges**

Organizations and individuals shall be required to pay fees and charges when carrying out procedures related to intellectual property rights in accordance with the provisions of this Law and other relevant laws.

### **Part II**

## **COPYRIGHT AND RELATED RIGHTS**

### **Chapter I**

#### **CONDITIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS**

##### **Section 1. CONDITIONS FOR THE PROTECTION OF COPYRIGHT**

#### **Article 13. Authors and copyright holders who possess works protected by the copyright**

1. Organizations and individuals who possess works protected by the copyright comprise persons who directly create such works and copyright holders stipulated in Articles 37 to 42 enshrined in this Law.

2. Authors and copyright holders stipulated in Clause 1 of this Article shall comprise Vietnamese organizations and individuals; foreign organizations and individuals with works published for the first time in Vietnam and not yet published in any other country, or with works also published in Vietnam within a period of thirty days after the first publication carried out in another country; and foreign organizations and individuals with works which are protected in Vietnam under an international treaty on copyright of which the Socialist Republic of Vietnam is a member.

#### **Article 14. Types of works eligible to be put by the copyright protection**

1. Literary, artistic and scientific works eligible for copyright protection include:

a) Literary and scientific works, textbooks, course books and other works available in the form of written languages or other characters;

- b) Lectures, addresses and other speeches;
- c) Press works;
- d) Musical works;
- dd) Dramatic works;
- e) Cinematographic works and works created by the method like the method of creating cinematographic works (hereinafter collectively referred to as cinematographic works);
- g) Plastic-art works and works of applied art;
- h) Photographic works;
- i) Architectural works;
- k) Sketches, plans, maps and drawings related to topography, architecture or scientific works:
- l) Folklore and folk art works of folk culture;
- m) Computer programs and data compilations.

2. Derivative works shall be protected under Clause 1 of this Article only if this does not prejudice the copyright to works used to create these derivative works.

3. Protected works defined in Clauses 1 and 2 of this Article must be created personally by authors through their intellectual labor without copying others' works.

4. The Government shall provide detailed instructions on the types of works specified in Clause 1 of this Article.

#### **Article 15. Objects that are not protected by the copyright**

- 1. News that only provide current information.
- 2. Legal normative instruments, administrative documents and others in the judicial domain, and official translations of these documents.
- 3. Processes, systems, operational methods, concepts, principles and data.

### **Section 2. CONDITIONS FOR THE PROTECTION OF RELATED RIGHTS**

#### **Article 16. Organizations and individuals eligible for the protection of related rights**

- 1. Actors and actresses, singers, instrumentalists, dancers and other persons who perform literary and artistic works (hereinafter commonly referred to as performers).
- 2. Organizations and individuals who act as the owner of performances defined in Clause 1 of Article 44 of this Law.
- 3. Organizations and individuals who initially create the sounds and images of performances or other sounds and images in a fixed form (hereinafter commonly referred to as producers of audio and video recordings).
- 4. Organizations which initiate and carry out the broadcasting (hereinafter referred to as broadcasting organizations).

#### **Article 17. Objects of related rights protected by the copyright**

- 1. Performances shall be protected by the copyright if they come as one of the following:

- a) Any performance to be carried out by Vietnamese citizens in Vietnam or any foreign country;
- b) Any performance to be carried out by foreigners in Vietnam;
- c) Any performance to come into existence in respect of audio and video recordings, which shall be protected by the copyright as prescribed in Article 30 of this Law;
- d) Any performance to come into existence in respect of audio and video recordings that have been broadcast, which shall be protected by the copyright as stipulated by Article 31 of this Law;
- dd) Any performance to be protected by the copyright in compliance with the international agreements of which the Socialist Republic of Vietnam is a member.

2. Audio and video recordings shall be protected by the copyright if they come as one of the following:

- a) Those made by a Vietnamese producer;
- b) Those made by any producer who is protected by the copyright in accordance with the international agreements of which the Socialist Republic of Vietnam is a member.

3. Broadcasts and encrypted program-carrying satellite signals shall be protected by the copyright if they come as one of the following:

- a) Those produced by a broadcasting organization of Vietnamese national;
- b) Those produced by a broadcasting organization protected by the copyright as prescribed in the international agreements of which the Socialist Republic of Vietnam is a member.

4. Performances, audio and video recordings, broadcasts encrypted program-carrying satellite signals shall only be protected by the copyright as prescribed in the provisions of Clauses 1, 2 and 3 of this Article provided that they do not prejudice the copyright.

## **Chapter II**

### **CONTENTS OF, LIMITATIONS ON AND TERM OF THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS**

#### **Section 1. CONTENTS OF, LIMITATIONS ON AND TERM OF THE PROTECTION OF COPYRIGHT**

##### **Article 18. Copyright**

Copyright in works regulated in this Law shall comprise moral and economic rights.

##### **Article 19. Moral rights**

Moral rights shall be exercised by authors to:

- 1. Give titles to their works.
- 2. Give their real names or pseudonyms to their works; have their real names or pseudonyms acknowledged when their works are published or used.
- 3. Publish their works or authorize other persons to publish their works.
- 4. Protect the integrity of their works; and forbid other persons to modify, edit or distort their works in any form, causing harm to the honor and reputation of the author.



## **Article 20. Economic rights**

1. Moral rights shall be exercised by authors to:

- a) Create derivative works;
- b) Display their works to the public;
- c) Reproduce their works;
- d) Distribute or import the original or copies of their works;
- dd) Communicate their works to the public by wireless or landline means, electronic information networks or other technical means;
- e) Lease the original or copies of cinematographic works and computer programs.

2. Authors or copyright holders shall exclusively exercise the rights stipulated in Clause 1 of this Article or may grant other persons the right to exercise such rights under the provisions of this Law.

3. When any organization or individual exercises one, several or all of the rights stipulated in Clause 1 of this Article and in Clause 3 of Article 19 enshrined in this Law, such an organization or individual must ask for permission from the copyright holder and must pay royalties, remuneration or other material benefits to the copyright holder.

## **Article 21. Copyright in cinematographic works and dramatic works**

1. Persons who act as directors; screenwriters; cameramen; film editors; music composers; art designers; studio sound, lighting and art designers; studio props and technical effects designers, and persons engaged in other creative jobs in making cinematographic works shall have the rights stipulated in Clauses 1, 2 and 4 of Article 19 of this Law and other rights as agreed.

Persons who act as directors; playwrights; choreographers; music composers; art designers; stage sound, lighting and art designers; stage props and technical effects designers; and persons engaged in other creative jobs in making stage performances shall have the rights stipulated in Clauses 1, 2 and 4 of Article 19 set out in this Law and other rights as agreed.

2. Organizations and individuals who invest finance or material and technical facilities in the production of cinematographic works and stage performances shall be holders of the rights stipulated in Clause 3 of Article 19 and Article 20 set out in this Law.

3. Organizations and individuals stipulated in Clause 2 of this Article shall be obliged to pay royalties, remuneration or other material benefits as agreed with the persons stipulated in Clause 1 of this Article.

## **Article 22. Copyright in computer programs and data collections**

1. Computer program means a set of instructions expressed in the form of commands, codes, diagrams and other forms which, when incorporated in a device likely to be read by a computer, are capable of enabling such computer to run a task or achieve a specific result.

Computer programs shall be protected by the copyright just like literary works, irrespective of whether the computer programs are expressed in the form of source or machine codes.

2. Data collection means a set of data selected or arranged in a creative way and expressed in an electronic form or any other form.

Copyright protection of data collections shall not encompass the protection of the data itself and does not prejudice the copyright in the data itself.

### **Article 23. Copyright in folklore and folk art works**

1. Folklore and folk art work means a collective creation based on the traditions of a community or individuals reflecting the ambitions of such community and expressed in a form appropriate to the cultural and social characteristics, standards and values of such community which have been passed down by adaptation or by other means. Folklore and folk art works shall comprise:

- a) Folk tales, poems and riddles;
- b) Folk songs and melodies;
- c) Folk dances, plays, rites and games;
- d) Folk art products including graphics, paintings, sculptures, musical instruments, architectural models and other art genres in any material form.

2. Organizations and individuals using folklore and folk art works must cite the origins of the folklore and folk art works, and must ensure that the authentic value of such folklore and folk art works is preserved.

### **Article 24. Copyright in literary, artistic and scientific works**

The Government shall issue specific regulations on governing the protection of copyright in the literary, artistic and scientific works stipulated in Clause 1 of Article 14 enshrined in this Law.

### **Article 25. Cases of use of published works in which permission and payment of royalties or remunerations are not required**

1. Cases of use of published works in which permission and payment of royalties or remunerations are not required include:

- a) Make a copy of works for personal scientific research or teaching purposes;
- b) Reasonable recitation of works without misrepresenting the authors' views for the commentary or illustration purpose;
- c) Recitation of works without misrepresenting the authors' views in articles published in newspapers or periodicals, in radio or television broadcasts, or documentaries;
- d) Recitation of works in schools for lecturing purpose without misrepresenting the authors' views and not for commercial purpose;
- dd) Reprography of works by libraries for the archive and research purposes;
- e) Performance of dramatic works or other performance art works in cultural, communicative activities without collecting any charges in any form;
- g) Audio and video recording of performances for the news-broadcasting and teaching purposes;
- h) Photographing or televising of plastic art, architectural, photographic, applied-art works displayed at public places for the purpose of promoting images of these works;
- i) Transcription of works into Braille or characters of other languages for the blind;
- k) Importation of copies of others' works for personal use.

2. Organizations and individuals that use works defined in Clause 1 of this Article may neither affect the normal utilization of these works nor prejudice the rights of the authors or copyright holders; and shall indicate the authors' names, and sources and origins of these works.

3. The provisions of Points a and dd, Clause 1 of this Article are not applicable to architectural works, plastic-art works and computer programs.

### **Article 26. Cases of use of published works in which permission is not required but the payment of royalties or remunerations is required**

1. Broadcasting organizations that broadcast published works with sponsorship, advertisement or charge in whatever form, are not required to obtain permission but have to pay royalties or remunerations to copyright holders from the date of use.

Levels of royalties, remunerations or other material benefits and modes of payment shall be agreed upon by contracting parties. If no agreement is reached, the Governmental regulations must be observed or any lawsuit shall be filed at court under laws.

Broadcasting organizations that broadcast published works without sponsorship, advertisement or charge in whatever form, are not required to obtain permission but have to pay royalties or remunerations to copyright holders from the date of use under the Governmental regulations.

2. Organizations and individuals that use works under Clause 1 of this Article must neither affect the normal utilization of these works nor prejudice the rights of the authors or copyright holders; and shall indicate the authors' names, and sources and origins of the works.

3. The use of works in the cases specified in Clause 1 of this Article does not apply to cinematographic works.

### **Article 27. Term of copyright protection**

1. The moral rights mentioned in Clauses 1, 2 and 4 of Article 19 set out in this Law shall be protected by the copyright for an indefinite term.

2. The moral rights provided for in Clause 3, Article 19 and the economic rights provided for in Article 20 of this Law shall be protected within the term as follows:

a) Cinematographic works, photographic works, works of applied art and anonymous works have a term of protection of seventy five years from the date of first publication. For cinematographic works, photographic works and works of applied art which remain unpublished within twenty five years from the date on which they are expressed in a fixed form, the term of protection is one hundred years from the date thereof. For anonymous works, when information on their authors is published, the term of protection will be calculated under Point b of this Clause.

b) A work not specified at Point a of this Clause is protected for the whole life of the author and for fifty years after his/her death. For a work under joint authorship, the term of protection expires in the fiftieth year after the death of the last co-author;

c) The term of protection specified at Points a and b of this Clause expires at 24:00 of December 31 of the year in which the copyright protection term expires.

### **Article 28. Infringement of copyright**

1. Appropriating the copyright in a literary, artistic or scientific work.

2. Impersonating an author.

3. Publishing or distributing a work without permission from the author.
4. Publishing or distributing a work of joint authors without permission from the co-authors.
5. Modifying, editing or distorting a work in any way which prejudices the honor and reputation of the author.
6. Copying a work without permission from the author or copyright holder, except in the cases stipulated in Point a and Point dd Clause 1 Article 25 of this Law.
7. Making a derivative work without permission from the author or copyright holder of the work used to make such derivative work, except in the case stipulated in Point i Clause 1 Article 25 of this Law.
8. Using a work without permission from the copyright holder and without paying royalties, remuneration or other material benefits in accordance with law, except in the cases stipulated in Clause 1 Article 25 of this Law.
9. Leasing a work without paying royalties, remuneration or other material benefits to the author or copyright holder.
10. Duplicating, producing copies of, distributing, displaying or communicating a work to the public via a communications network or digital means without permission from the copyright holder.
11. Publishing a work without permission from the copyright holder.
12. Deliberately destroying or de-activating the technical solutions applied by the copyright holder to protect the copyright in his or her right-holder's works.
13. Deliberately removing or modifying the electronic information on the management of the rights to such work.
14. Manufacturing, assembling, transforming, distributing, importing, exporting, selling or leasing equipment when knowing, or having grounds to know, that such equipment may deactivate technical solutions applied by the copyright holder to protect the copyright in his or her works.
15. Making and selling a work with a forged signature of the author displayed on such work.
16. Importing, exporting or distributing copies of a work without permission from the copyright holder.

## **Section 2. CONTENTS OF, LIMITATIONS ON AND TERM OF PROTECTION OF RELATED RIGHTS**

### **Article 29. Rights of performers**

1. Performers who are also the investors shall have the moral and economic rights to their performances. Where performers are not the investors, the performers shall have the moral rights and the investors shall have the economic rights to such performances.
2. Moral rights shall be exercised by authors to:
  - a) Have their name acknowledged upon performance or when distributing audio and video recordings or broadcasting their performances;

b) Protect the integrity of their performance imagery, and prevent others from modifying, editing or distorting the work in any way prejudicial to the honor and reputation of the performer.

3. 3. Economic rights shall include the exclusive right to be exercised or by which others are authorized to exercise their following rights to:

a) Express their live performance in a fixed form on audio and video recordings;

b) Directly or indirectly reproduce a performance which has been expressed in a fixed form on audio and video recordings;

c) Broadcast or transmit to the public in other ways an unfixed performance so that it may be accessed by the public, except where such performance is intended to be broadcast;

d) Distribute to the public an original performance and copies thereof in the form of sale, rental or distribution by any technical means which are accessible to the public.

4. Any organization or individual who makes most use of the rights stipulated in Clause 3 of this Article must pay remuneration to the performer as stipulated by laws or as mutually agreed if not regulated by laws.

#### **Article 30. Rights of producers of phonograms and video recordings**

1. Producers of phonograms and video recordings have the exclusive right to or authorize others to exercise their following rights to:

a) Directly or indirectly reproduce their phonograms and video recordings;

b) Import and distribute to the public their original phonograms and video recordings and copies thereof in the form of sale, rent or distribution by whatever technical means accessible to the public.

2. Producers of phonograms and video recordings shall be granted material benefits when their phonograms and video recordings are distributed to the public.

#### **Article 31. Rights of broadcasting organizations**

1. Broadcasting organizations shall have the exclusive right to, or authorize others to exercise the following rights to:

a) Broadcast or re-broadcast their broadcasting programs;

b) Distribute their broadcasts to the public;

c) Turn their broadcasts into a fixed form;

d) Reproduce a fixed version of their broadcasts.

2. Broadcasting organizations shall be entitled to material benefits when their broadcasts are recorded and distributed to the public.

#### **Article 32. Cases in which related rights may be exercised without having to seek permission or pay royalties or remunerations**

1. Related rights may be exercised without having to seek permission or pay royalties or remunerations in the following cases:

a) Making one copy of a work for the purpose of conducting personal scientific researches;

- b) Duplicating a work for teaching purposes, except for performances, audio and video recordings or broadcasts which have been published for teaching purposes;
- c) Taking appropriate quotes from a work in order to provide information;
- d) Making provisional copies of a work in order for a broadcasting organization to carry out the broadcasting when the broadcasting right has been granted.

2. Organizations and individuals who use works stipulated in Clause 1 of this Article must neither affect the normal use of performances, audio and video recordings or broadcasts; nor cause any prejudice to the rights of performers, producers of audio and video recordings, or broadcasting organizations.

### **Article 33. Cases of use of related rights in which permission is not required but payment of royalties or remunerations is required**

1. Organizations and individuals that directly or indirectly use phonograms or video recordings already published for commercial purposes to make their broadcasts, which are funded by the sponsorship, advertisement or charges in any form, are not required to obtain permission but have to pay agreed royalties or remunerations to authors, copyright holders, performers or producers of phonograms or video recordings, or broadcasting organizations from the date of use. In case no agreement is reached, they shall comply with the Governmental regulations or file any lawsuit at the court as stipulated by laws.

Organizations and individuals that directly or indirectly use phonograms or video recordings already published for commercial purposes to make their broadcasts, which are funded by the sponsorship, advertisement or charges in whatever form, are not required to obtain permission but have to pay agreed royalties or remunerations to authors, copyright holders, performers or producers of phonograms or video recordings, or broadcasting organizations from the date of use under the Governmental regulations.

2. Organizations and individuals that use phonograms or video recordings already published in their business or commercial activities are not required obtaining permission but having to pay agreed royalties or remunerations to authors, copyright holders, performers or producers of phonograms or video recordings, or broadcasting organizations from the date of use. In case no agreement is reached, they shall comply with regulations of the Government or file any lawsuit at the court under laws.

3. Organizations and individuals that use the rights mentioned in Clauses 1 and 2 of this Article must neither affect the normal utilization of performances, phonograms, video recordings or broadcasts, nor prejudice the rights of performers, producers of phonograms and video recordings, and broadcasting organizations.

### **Article 34. Term of the protection of related rights**

1. The rights of performers shall be protected for fifty (50) years, which starts from the year following the year in which the performance is turned into a fixed form.

2. The rights of producers of audio and video recordings shall be protected for fifty (50) years which starts from the year following the year of publication, or fifty (50) years which starts from the year following the year in which any unpublished audio and video recording is turned into a fixed form.

3. The rights of broadcasting organizations shall be protected for fifty (50) years which starts from the year following the year in which a broadcast is made.
4. The terms of protection stipulated in Clauses 1, 2 and 3 of this Article shall expire at 24:00 on 31 December of the year in which the protection of the related rights expires.

### **Article 35. Infringement of related rights**

1. Appropriate the rights of a performer, producer of audio and video recordings, or of a broadcasting organization.
2. Impersonate a performer, producer of audio and video recordings, or a broadcasting organization.
3. Publish, produce and distribute a fixed performance, audio and video recording or a broadcast without permission from the performer, producer of the audio and video recording or from the broadcasting organization.
4. Modify, edit or distort a performance in any way by which the honor and reputation of the performer can be ruined.
5. Copy or recite from a performance in a fixed form, audio and video recording or a broadcast without permission from the performer, producer of the audio and visual fixation or from the broadcasting organization.
6. Deliberately remove or modify the electronic information on the management of rights without permission from the related right holder.
7. Deliberately destroy or de-activate technical solutions applied by the related right holder to protect his or her rights.
8. Broadcast, distribute or import performances, copies of a fixed performance or audio and video recordings upon knowing, or having grounds to know, that the electronic information on the management of rights has been removed or modified without any permission from the related right holder.
9. Manufacture, assemble, transform, distribute, import, export, sell or lease equipment upon knowing, or having grounds to know, that such equipment helps to illegally decode encrypted program-carrying satellite signals.
10. Deliberately receive or relay encrypted program-carrying satellite signals without any permission from the legal distributor.

## **Chapter III**

### **HOLDERS OF COPYRIGHT AND RELATED RIGHTS**

#### **Article 36. Copyright holders**

Copyright holder means an organization or individual who holds one, several or all of the economic rights stipulated in Article 20 of this Law.

#### **Article 37. Authors acting as copyright holders**

Authors, who devote their own time, invest their financial and material or technical facilities in creating works shall have the moral rights stipulated in Article 19 and the economic rights stipulated in Article 20 of this Law.

### **Article 38. Copyright holders known as co-authors**

1. Co-authors who devote their time, invest their financial and material or technical facilities in jointly creating works shall share the rights to such works stipulated in Articles 19 and 20 of this Law.
2. Co-authors as defined in Clause 1 of this Article who has jointly created a work, a separate part of which is detachable for separate use without prejudice to the parts of the work of the other co-authors, shall have the rights to such separate part stipulated in Articles 19 and 20 of this Law.

### **Article 39. Copyright holders as organizations or individuals who assign tasks to authors or who enter into contracts with authors**

1. Any organization which assigns the task of creating a work to an author who serves as a member of such organization shall be the holder of the rights stipulated in Clause 3 Article 19 and Article 20 of this Law, unless otherwise agreed.
2. Any organization or individual who enters into a contract with an author for the creation of a work shall be the holder of the rights stipulated in Clause 3 Article 19 and Article 20 of this Law, unless otherwise agreed.

### **Article 40. Copyright holders known as heirs**

Any organization or individual who inherits the copyright in accordance with the law on inheritance shall be the holder of the rights stipulated in Clause 3 Article 19 and Article 20 of this Law.

### **Article 41. Copyright held by the transferee**

1. Organizations and individuals that are the transferee of one, several or all of the rights specified in Article 20 and Clause 3, Article 19 of this Law under contracts are copyright holders.
2. Organizations and individuals that are managing anonymous works enjoy the rights as owners until the names of authors of these works are identified.

### **Article 42. Copyright held by the State**

1. The State is the holder of copyright in the following works:
  - a) Anonymous works, except those specified in Clause 2 Article 41 of this Law;
  - b) Works of which terms of protection remain unexpired but their copyright holders die without heirs, their heirs renounce the succession or are deprived of the right to succession;
  - c) Works to which the ownership right has been transferred by their copyright holders to the State.
2. The Government shall provide specific regulations on the use of state-owned works.

### **Article 43. Public-owned works**

1. Any work of which term of protection expires under Article 27 of this Law shall belong to the public.



2. All organizations and individuals shall be entitled to the works stipulated in Clause 1 of this Article but must respect the moral rights of authors stipulated in Article 19 of this Law.
3. The Government shall provide specific regulations on the use of public-owned works.

#### **Article 44. Related right holders**

1. Organizations and individuals who use their time and make a financial investment in or use their material and technical facilities to give a performance shall be the owners of such performance unless otherwise agreed with the parties concerned.
2. Organizations and individuals who use their time and make a financial investment in or use their material and technical facilities to produce audio and video recordings shall be the owners of such audio and video recordings unless otherwise agreed with the parties concerned.
3. Broadcasting organizations shall be the owners of their broadcasts unless otherwise agreed with the parties concerned.

### **Chapter IV**

#### **TRANSFER OF COPYRIGHT AND RELATED RIGHTS**

##### **Section 1. TRANSFER OF COPYRIGHT AND RELATED RIGHTS**

#### **Article 45. General provisions on the transfer of copyright and related rights**

1. Transfer of copyright and related rights means the conveyance of the ownership of the rights from copyright holders or related right holders stipulated in Articles 19, 3, 20, 29.3, 30 and 31 of this Law to other organizations and individuals as agreed in a contract or in accordance with laws.
2. Authors shall not be permitted to transfer the moral rights stipulated in Article 19 of this Law, except for the right of publication. Performers shall not be permitted to transfer the moral rights stipulated in Clause 2 Article 29 of this Law.
3. Where a work, performance, audio and video recording or broadcast is jointly owned, the transfer thereof must be agreed upon by all co-owners. In a case of co-ownership of a work, performance, audio and video recording or broadcast which is composed of separate parts detachable for separate use, copyright holders or related right holders may transfer their copyright or related rights to their separate parts to other organizations or individuals.

#### **Article 46. Contracts for the transfer of copyright or related rights**

1. A contract for the transfer of copyright or related rights must be made in writing and specify the following principal contents:
  - a) Names and addresses of the transferer and the transferee;
  - b) Grounds for the transfer;
  - c) Price and method of payment;
  - d) Rights and obligations of the contracting parties;
  - dd) Liability for any breach of contract.

2. The execution, amendment, termination or cancellation to be carried out in a contract for the transfer of copyright or related rights must comply with the provisions enshrined in the Civil Code.

## **Section 2. LICENSING OF COPYRIGHT AND RELATED RIGHTS**

### **Article 47. General provisions on licensing the copyright and related rights**

1. Licensing of copyright and related rights means the grant of permission by the copyright holder or related right holder for another organization or individual to use for a definite term one, several or all of the rights stipulated in Clause 3 Articles 19, Article 20, Clause 3 Article 29, Article 30 and Article 31 enshrined in this Law.

2. Authors shall not be permitted to license the moral rights stipulated in Article 19 of this Law, except for the right of publication. Performers shall not be permitted to license the moral rights specified in Clause 2 Article 29 of this Law.

3. Where a work, performance, audio and video recording or broadcast is under joint ownership, the licensing of copyright or related rights therein must be agreed upon by all co-owners. In the case of joint ownership of a work, performance, audio and video recording or broadcast which is composed of separate parts detachable for independent use, copyright holders or related right holders may license their copyright or related rights in their separate parts to other organizations or individuals.

4. Any organization or individual who is the licensee of copyright or related rights shall be permitted to license other organizations and individuals after obtaining the permission from the copyright holder or related right holder.

### **Article 48. Contract for the licensing of copyright or related rights**

1. A contract for the licensing of copyright or related rights must be made in writing and include the following principal contents:

- a) Full names and addresses of the licensor and the licensee;
- b) Grounds for the licensing;
- c) Scope of the licensing;
- d) Price and method of payment;
- dd) Rights and obligations of the contracting parties;
- e) Liability for any breach of contract.

2. The performance, amendment, termination or cancellation to be carried out in a contract for the licensing of copyright or related rights must comply with the provisions set out in the Civil Code.

## **Chapter V**

### **CERTIFICATION OF COPYRIGHT AND RELATED RIGHT REGISTRATION**

#### **Article 49. Registration of copyright and related rights**

1. Registration of copyright and related rights means the submission of an application and attached documents (hereinafter referred to as application) carried out by an author, copyright

holder or related rights holder to the competent authority in order to record information about the author, the work, the copyright holder and the related rights holder.

2. The application for the issuance of a certificate of copyright registration or a certificate of related right registration shall not be a compulsory pre-requisite for an entitlement to copyright or related rights in accordance with the provisions of this Law.

3. Organizations and individuals who are granted certificates of copyright registration or certificates of related right registration shall not take on any obligation to prove their ownership of such copyright or related rights in case of any dispute that arises, unless otherwise proved.

#### **Article 50. Application for the registration of copyright and related rights**

1. Authors or holders of copyright and related rights may directly submit, or may authorize other organizations or individuals to submit the application for the registration of copyright or related rights.

2. An application for the registration of copyright or related rights must comprise:

a) A declaration form for the registration of copyright or related rights.

A declaration form must be made in Vietnamese and signed by the author, copyright holder, related right holder or person authorized to submit the application; and must include complete information on the applicant, author, copyright holder or related right holder; the summarized content of the work, performance, audio and video recording or broadcast; the name of the author, and the title of the work used to make the derivative work if the work to be registered is a derivative work; the date, place and form of publication; and a commitment to bearing responsibility for the information given in the application.

The Ministry of Culture, Sports and Tourism shall adopt the declaration form for the registration of copyright or related rights;

b) Two copies of the work that requires the registration of copyright and related rights or of the subject in a fixed form that requires the registration of related rights;

c) A letter of authorization applicable to those who are authorized persons;

d) A proof of the right to submit the application if the applicant is the beneficiary of such right from others through the process of inheritance, succession or transfer;

dd) A written permission given by the co-author in the case of a work under joint authorship;

e) A written consent given by the co-owner in the case of co-ownership of the copyright or related rights.

3. The required documents stipulated at Point c, d, dd and e of Clause 2 of this Article must be prepared in Vietnamese. Any document written in a foreign language must be translated into Vietnamese.

#### **Article 51. Authority to issue the certificate of copyright registration and the certificate of related right registration**

1. The regulatory agency of copyright and related rights shall have the authority to issue the certificate of copyright registration and the certificate of related right registration.

2. The regulatory agency that have the competence in the issuance of the certificate of copyright and related right registration shall have the authority to reissue, replace, renew or invalidate such certificates.

3. The Government shall provide specific regulations for the requirements, processes and procedures for the reissuance, renewal, replacement and invalidation of the certificates of copyright and related right registration.

4. The Ministry of Culture, Sports and Tourism shall adopt the form of the certificate of copyright or related right registration.

#### **Article 52. Time-limit for granting the certificate of copyright and related right registration**

The regulatory agency for copyright and related rights shall be responsible to grant the certificate of copyright and related right registration to the applicant, or shall notify the applicant in writing in case of refusal to grant a certificate, within a period of fifteen (15) working days from the receipt of a valid application.

#### **Article 53. Validity of the certificate of copyright and related right registration**

1. The certificate of copyright and related right registration shall be valid throughout the entire territory of Vietnam.

2. The certificate of copyright and related right registration which was granted by the regulatory agency for copyright and related rights before the effective date of this Law shall continue to be valid.

#### **Article 54. Official record and publication of the registration results of copyright and related rights**

1. The certificate of copyright and related right registration shall be officially recorded in the National Register of Copyright and Related Rights.

2. The decisions on the issuance, reissuance, renewal, replacement and invalidation of the certificate of copyright and related right registration shall be published in the Official Gazette at the section of copyright and related rights.

#### **Article 55. Reissuance, renewal, replacement and invalidation of the certificate of copyright and related right registration**

1. Where the certificate of copyright and related right registration is lost or damaged, or where the copyright holder or related right holder is changed, the regulatory agency stipulated in Clause 2 Article 51 of this Law shall reissue or replace the certificate of copyright and related right registration.

2. Where the holder of the certificate of copyright and related right registration is not the author, copyright holder or related right holder; or where the registered work, audio and video recording or broadcast is not protected by the copyright, the regulatory agency stipulated in Clause 2 Article 51 of this Law shall invalidate such certificates.

3. Any organization or individual who discovers that the issuance of any certificate of copyright and related right registration is violating laws shall be entitled to request the regulatory agency for copyright and related rights to make such certificate become invalid.

### **Chapter VI**

## **REPRESENTATION, CONSULTANCY AND SERVICES REGARDING COPYRIGHT AND RELATED RIGHTS**

### **Article 56. Organizations acting as community representatives on copyright or related right issues**

1. An organization acting as the community representative on copyright or related right issues means a non-profit organization that are established under an agreement between authors, copyright holders or related right holders and ensures their protection for copyright and related rights comply with legal regulations.

2. An organization acting as the community representative on copyright or related right issues may perform the activities below as being authorized by authors, copyright holders or related right holders:

a) Manage copyright or related rights; negotiate the licensing, collection and distribution of royalties, remunerations and other material benefits gained from the permission to exercise authorized rights;

b) Protect the legitimate rights and interests of its members; carry out conciliation if a dispute arises.

3. An organization acting as the community representative on copyright or related right issues shall have the following rights and duties:

a) Encourage the creativity and other social activities;

b) Co-operate with relevant partners in international organizations and countries on the protection of copyright and related rights;

c) Send periodic and unscheduled reports to the regulatory agency on its community representative activities;

d) Other rights and duties stipulated by laws.

### **Article 57. Copyright and related right consultancy service organization**

1. Copyright and related right consultancy service organization is established and runs its business in accordance with laws.

2. Copyright and related right consultancy service organization may perform the following activities requested by authors, copyright holders and related right holders:

a) Provide consulting services on issues related to the law on copyright and related rights;

b) Act on behalf of copyright holders and related right holders to carry out the application for the registration of copyright and related rights according to what they are duly authorized;

c) Participate in other legal relationships on copyright, related rights and protection of legitimate rights and interests held by authors, copyright holders and related right holders according to what they are duly authorized.

## **Part III**

## **INDUSTRIAL PROPERTY RIGHT**

### **Chapter VII**

## **CONDITIONS FOR THE PROTECTION OF INDUSTRIAL PROPERTY RIGHT**

### **Section 1. CONDITIONS FOR THE PROTECTION OF INVENTIONS**

#### **Article 58. General conditions for inventions to be protected**

1. An invention shall be eligible to be protected in the form of a patent when it satisfies the following requirements:
  - a) It is novel;
  - b) It gains an acceptable level of creativity;
  - c) It is susceptible of industrial application.
2. Unless an invention is of common knowledge, it shall be protected in the form of the grant of a utility solution patent when it satisfies the following requirements:
  - a) It is novel;
  - b) It is susceptible of industrial application.

#### **Article 59. Objects ineligible to be treated as a protected invention**

Objects ineligible to be treated as a protected invention include:

1. Scientific discoveries, theories and mathematical methods.
2. Schemes, plans, rules and methods for mental activities, domestic animal training, game playing and business practice; computer programs.
3. Information display method.
4. Solutions that are of aesthetic characteristics only.
5. Plant varieties, animal breeds.
6. Processes of plant or animal production which is mainly of a biological nature, other than microbiological processes.
7. Human and animal disease prevention, diagnostic and treatment methods.

#### **Article 60. Novelty of inventions**

1. An invention shall be deemed novel if it has not yet been publicly disclosed by use or by means of a written description or any other form either inside or outside Vietnam before the date on which the application for registration is submitted or ahead of the specified date on which the application for registration of inventions is prioritized.
2. An invention shall be deemed undisclosed to the public if it is made known to only a limited number of persons who are obliged to keep it secret.
3. An invention shall not be treated as the one that has lost its novelty if it is published in the following cases, provided that the invention registration application is filed within six (6) months from the date of publication:
  - a) It is published by another person without permission from the person having the right to register it as defined in Article 86 of this Law;

b) It is published in the form of a scientific report by the person having the right to register it as defined in Article 86 of this Law;

c) It is displayed at a national exhibition of Vietnam or at an official or officially recognized international exhibition by the person having the right to register it as defined in Article 86 of this Law.

#### **Article 61. Level of invention**

An invention shall be deemed to achieve an acceptable level of invention if, based on its technical solutions already publicly disclosed by the use or by means of a written description or in any other form either inside or outside Vietnam prior to the filing date or the priority date as applicable to the application for registration of the invention, such invention is really a breakthrough and cannot be easily created by a person who gains limited technical knowledge.

#### **Article 62. Industrial applicability of inventions**

An invention shall be considered to have an industrial applicability if it can be employed to perform the mass production of any product or its process can be applied repeatedly, which generate stable results.

### **Section 2. CONDITIONS FOR THE PROTECTION OF INDUSTRIAL DESIGNS**

#### **Article 63. General conditions for industrial designs eligible to be protected**

Industrial designs eligible to be protected must meet the following requirements:

1. It is novel;
2. It is creative;
3. It has industrial applicability.

#### **Article 64. Objects ineligible to be treated as a protected industrial design**

Objects ineligible to be treated as a protected industrial design include:

1. Exteriority of a product which is required by the technical features of the product.
2. Exteriority of civil or industrial construction works.
3. Exteriority of a product which is invisible during the use of the product.

#### **Article 65. Novelty of industrial designs**

1. An industrial design shall be deemed to be novel if it significantly differs from others which have been publicly disclosed through the use or by means of written descriptions or in any other form either inside or outside Vietnam prior to the filing date or the specified date applicable to any application for registration of the industrial design given the priority.
2. Two industrial designs shall not be considered significantly different from each other if they only have difference in their exterior appearance which can not be noticeable, memorable and can not recognize the distinction between them in respect of their general designs.
3. An industrial design shall be considered to be not yet disclosed to the public if it is made known to only a limited number of persons who are obliged to keep it secret.

4. An industrial design shall be considered not to lose its novelty if it is published in the following cases, provided that the application for registration of the industrial design would be submitted within six (6) months from the date of publication:

It is published by another person without any permission from the person having the right to register it as defined in Article 86 of this Law;

b) It is published in the form of a scientific report by the person having the right to register it as defined in Article 86 of this Law;

c) It is displayed at a national exhibition organized in Vietnam or at an official or officially recognized international exhibition by the person having the right to register it as defined in Article 86 of this Law.

#### **Article 66. Creativity of industrial designs**

An industrial design shall be considered creative if, based on industrial designs already publicly disclosed through the use or by means of written descriptions or in any other form either inside or outside Vietnam before the filing date or the specified date, as applicable to the application for registration of the industrial design that is given the priority, the industrial design cannot be easily created by a person who has limited knowledge in the equivalent sector.

#### **Article 67. Applicability of industrial designs**

An industrial design shall be considered to have the industrial applicability if it can be used as a model for mass production of any product of which exterior appearance is created by such industrial design through the application of industrial or handicraft methods.

### **Section 3. CONDITIONS FOR THE PROTECTION OF LAYOUT DESIGNS**

#### **Article 68 General conditions for layout designs to be eligible for the protection**

A layout design shall be eligible for the protection when it satisfies the following conditions:

1. It is original.
2. It is novel for the commercial purpose.

#### **Article 69. Objects ineligible to be treated as protected layout designs**

The following items shall be ineligible for the protection as layout designs:

1. Principles, processes, systems and methods operated by semiconductor integrated circuits.
2. Information or software contained in semiconductor integrated circuits.

#### **Article 70. Originality of layout designs**

1. A layout design shall be considered original if it satisfies the following conditions:

- a) It is the result obtained from its author's creative labour;
- b) It was not widely known among layout designers or manufacturers of semiconductor integrated circuits at the time of its creation.

2. A layout design which is a combination of elements and common interconnections shall be deemed to be original only if such combination as its general concept is original as prescribed in Clause 1 of this Article.



## **Article 71. Commercial novelty of layout designs**

1. A layout design shall be deemed to be novel for the commercial purpose if it has not been yet traded anywhere in the world prior to the date on which the application for registration is submitted.
2. A layout design shall not be deemed to lose its commercial novelty if the application for registration of the layout design is filed within two years from the date on which it is traded for the first time anywhere in the world by the person who has the right to register it as defined in Article 86 of this Law or by his or her licensee.
3. Commercial use of a layout design as stipulated in Clause 2 of this Article means any act of public distribution for commercial purposes in respect of any semiconductor integrated circuit produced by such layout design, or any commodity built with such semiconductor integrated circuit.

## **Section 4. CONDITIONS FOR THE PROTECTION OF MARKS**

### **Article 72. General conditions for marks to be eligible for the protection**

A mark shall be eligible to be protected when it satisfies the following conditions:

1. It is a visible sign in the form of letters, words, drawings or images including holograms, or a combination thereof, designed in one or more colors.
2. It is capable of distinguishing goods or services of this mark owner from those of the other.

### **Article 73. Signs ineligible to be treated as marks to be protected by the copyright**

Signs below ineligible to be treated as marks to be protected by the copyright

1. Identical or similar signs which are confused with national flags or national emblems.
2. Identical or similar signs which are confused with emblems, flags, coats of arms, abbreviated names or full names of Vietnamese State bodies, political organizations, socio-political organizations, socio-politico-professional organizations, social organizations or socio-vocational organizations or international organizations, unless any permission from these entities is granted.
3. Identical and similar signs which are confused with real names, aliases, pseudonyms or images of leaders, national heroes or famous personalities of Vietnam or foreign countries.
4. Identical and similar signs which are confused with stamps used for the purpose of certification, examination and warranty by international organizations which have the right to prohibit the illegal use of such stamps, except where these organizations register these signs as certification marks.
5. Signs which cause misunderstanding or confusion or which deceive consumers as to the origin, properties, use, quality, value or other characteristics of goods or services.

### **Article 74. Distinctiveness of marks**

1. A mark shall be deemed to be distinctive if it consists of one or more easily noticeable and memorable elements, or of many elements that constitute an easily noticeable and memorable continuum, and does not fall into the cases stipulated in Clause 2 of this Article.
2. A mark shall be deemed to be indistinctive if it is a mark falling into one of the following categories:

- a) Simple shapes and geometric figures, numerals, letters or scripts of uncommon languages, except where such sign has been widely used and recognized as a mark;
- b) Conventional signs or symbols, pictures or common names in any language of goods or services that have been widely and regularly used and made known to many people;
- c) Signs referring to time, place and method of production; category, quantity, quality, properties, ingredients, use, value or other characteristics descriptive of goods or services, except where such signs have acquired distinctiveness by use before the submission of the application for registration of the mark;
- d) Signs describing the legal status and business sector of business entities;
- dd) Signs indicating the geographical origin of goods or services, except where such signs have been widely used and recognized as a mark or registered as a collective mark or certification mark as stipulated in this Law;
- e) Signs other than integrated marks which are confusingly identical or similar to registered marks of identical or similar goods or services on the basis of applications for registration with earlier submission dates or specific date on which an application is given the priority, including applications for registration of marks which are submitted in accordance with a treaty of which the Socialist Republic of Vietnam is a member;
- g) Signs confusingly identical or similar to another person's mark which has been widely used and recognized for similar or identical goods or services before the submission date or the specified date on which an application is given the priority;
- h) Signs confusingly identical or similar to another person's mark which has been registered for identical or similar goods or services, the registration certificate of which has been invalidated for no more than five years, except where its validity is cancelled on account of its failure to comply with Point d Clause 1 Article 95 of this Law;
- i) Signs confusingly identical or similar to another person's mark recognized as a well known mark which has been registered for goods or services which are identical or similar to those bearing such well known mark, or for dissimilar goods or services if the use of such mark may affect the distinctiveness of the well known mark or the mark registration was aimed at taking advantage of the reputation of the well known mark;
- k) Signs identical or similar to another person's trade name currently in use if the use of such sign may cause confusion to consumers in terms of the origin of goods or services;
- l) Signs identical or similar to a protected geographical indication if the use of such signs may mislead consumers as to the geographical origin of goods;
- m) Signs identical to, containing or being translated or transcribed from protected geographical indications for wines or spirits if such signs have been registered for use with respect to wines and spirits not originating from the geographical areas bearing such geographical indications;
- n) Signs identical to or slightly different from another person's industrial design which has been protected on the basis of an application for registration of an industrial design with a submission date or specified date on which an application is given the priority, which is earlier than that of the application for registration of the mark.

## **Article 75. Criteria for evaluation of whether or not a mark is well known**

The following criteria shall be taken into account when considering whether or not a mark is well known:

1. The number of relevant consumers who can recognize the mark by the purchase or use of goods or services identified by such a mark, or learn about the mark from advertisements.
2. The territorial area in which goods or services bearing the mark are circulated.
3. Turnover received from the sale of goods or services identified by the mark or the quantity of such goods sold or services.
4. Duration of continuous use of the mark.
5. Widespread reputation of goods or services bearing the mark.
6. Number of countries providing the protection for the mark.
7. Number of countries recognizing the mark as a well known mark.
8. Assignment price, licensing price, or contributed capital contribution value of the mark.

## **Section 5. CONDITIONS FOR THE PROTECTION OF TRADE NAMES**

### **Article 76. General conditions for trade names to be eligible for protection**

A trade name shall be protected when it is capable of distinguishing the business entity bearing it from other business entities operating in the same business sector and locality.

### **Article 77. Objects ineligible for protection as protected trade names**

Names of State bodies, political organizations, socio-political organizations, socio-politico-professional organizations, social organizations, socio-professional organizations and other entities not involved in business activities shall not be protected as trade names.

### **Article 78. Distinctiveness of trade names**

A trade name shall be deemed to be distinctive when it satisfies the following conditions:

1. It consists of a proper name, except where the proper name was widely known by use.
2. It is not confusingly identical or similar to a trade name which was used earlier by another person in the same business sector and locality.
3. It is not confusingly identical or similar to another person's mark or a geographical indication which was protected before the date of use of such trade name.

## **Section 6. CONDITIONS FOR PROTECTION OF GEOGRAPHICAL INDICATIONS**

### **Article 79. General conditions for geographical indications to be eligible for protection**

A geographical indication shall be eligible for protection when it satisfies the following conditions:

1. The product bearing the geographical indication originates from the area, locality, territory or country corresponding to such geographical indication.
2. The product bearing the geographical indication has a reputation, quality or characteristics mainly attributable to geographical conditions of the area, locality, territory or country corresponding to such geographical indication.

## **Article 80. Objects ineligible to be treated as a protected geographical indication**

The following objects shall be ineligible for protection as geographical indications:

1. Names or indications which have become generic names of goods in Vietnam.
2. Geographical indications of foreign countries where they are not, or no longer, protected or used.
3. Geographical indications identical or similar to a protected mark, where the use of such geographical indication is likely to cause confusion as to the origin of products.
4. Geographical indications which mislead consumers as to the true geographical origin of products bearing such geographical indications.

## **Article 81. Reputation, quality and characteristics of products bearing geographical indications**

1. Reputation of products bearing a geographical indication shall be determined on the basis of the trust of consumers in such products to the extent such products are widely known to and selected by consumers.
2. Quality and characteristics of products bearing a geographical indication shall be determined by one or more qualitative, quantitative or physically, chemically, microbiologically perceptible criteria which can be tested by technical equipment or by experts with appropriate testing methods.

## **Article 82. Geographical conditions relevant to geographical indications**

1. Geographical conditions relevant to a geographical indication mean natural and human factors which are decisive to the reputation, quality and characteristics of products bearing such geographical indication.
2. Natural factors shall include climatic, hydrological, geological, topographical and ecological factors and other natural conditions.
3. Human factors shall include skills and techniques of producers and local traditional production processes.

## **Article 83. Geographical areas bearing geographical indications**

Geographical areas bearing geographical indications must have their boundaries accurately determined by words and maps.

## **Section 7. CONDITIONS FOR PROTECTION OF TRADE SECRETS**

### **Article 84. General conditions for trade secrets to be eligible for protection**

A trade secret shall be eligible for protection when it satisfies the following conditions:

1. It is neither common knowledge nor easily obtainable.
2. When used in business activities, the trade secret will bring about advantages for its holder over those who do not hold or use it.
3. The owner of the trade secret maintains its secrecy by all necessary means so that such secret will be neither disclosed nor easily accessible.

## **Article 85. Objects ineligible to be treated as protected trade secrets**

The following confidential information shall be ineligible to be protected as trade secrets:

1. Personal identification secrets.
2. State management secrets.
3. National defence and security secrets.
4. Other confidential information in no relation to business activities.

## **Chapter VIII**

### **ESTABLISHMENT OF INDUSTRIAL PROPERTY RIGHTS TO INVENTIONS, INDUSTRIAL DESIGNS, LAYOUT DESIGNS, MARKS AND GEOGRAPHICAL INDICATIONS**

#### **Section 1. REGISTRATION OF INVENTIONS, INDUSTRIAL DESIGNS, LAYOUT DESIGNS, MARKS AND GEOGRAPHICAL INDICATIONS**

#### **Article 86. Right to register inventions, industrial designs and layout designs**

1. The following organizations and individuals shall have the right to register inventions, industrial designs and layout designs:
  - a) Authors who have created inventions, industrial designs or layout designs by their own labour and at their own expense;
  - b) Organizations or individuals who have invested funds and material facilities in authors in the form of job assignment or hiring, unless otherwise agreed by the parties involved and provided that such agreements are not contrary to the provisions of Clause 2 of this Article.
2. The Government shall provide regulations on the right to register inventions, industrial designs and layout designs created by using material and technical facilities and funds from the State Budget.
3. Where a number of organizations and individuals have jointly created or invested in the creation of an invention, industrial design or layout design, such organizations and individuals shall all have the registration right which may only be exercised in case of mutual consents from these entities.
4. A person who has the registration right as stipulated in this Article may transfer the ownership of such right to other organizations or individuals by a written contract, bequest or inheritance in accordance with law, even where a registration application has already been submitted.

#### **Article 87. Right to register marks**

1. Organizations and individuals may register marks to be used for goods they produce or services they provide.
2. Organizations and individuals that conduct lawful commercial activities may register marks for products they are launched in the market but produced by others, provided that the producers neither use such marks for their products nor object to such registration.
3. Lawfully established collective organizations may register collective marks to be used by their members under regulations on use of collective marks. For signs indicating geographical origins

of goods or services, organizations that may register them are collective organizations of organizations or individuals engaged in production or trading in relevant localities. For other geographical names or signs indicating geographical origins of local specialties of Vietnam, the registration must be permitted by competent state agencies.

4. Organizations with the function of controlling and certifying the quality, properties, origin or other relevant criteria of goods or services may register certification marks, provided that they are not engaged in the production or trading of these goods or services. For other geographical names or signs indicating geographical origins of local specialties of Vietnam, the registration thereof must be permitted by a competent state agency.

5. Two or more organizations or individuals may jointly register a mark in order to become its co-owners on the following conditions:

- a) This mark is used in the names of all co-owners or used for goods or services which are produced or traded with the participation of all co-owners;
- b) The use of this mark causes no confusion to consumers as to the origin of goods or services.

6. Persons having the registration right defined in Clauses 1, 2, 3, 4 and 5 of this Article, including those having filed their registration applications, may assign the registration right to other organizations or individuals in the form of written contracts, bequeathal or inheritance under law, provided that the assigned organizations or individuals satisfy the relevant conditions on the persons having the registration right.

7. For a mark protected in a country being a contracting party to a treaty which prohibits the representative or agent of a mark owner to register such mark and to which the Socialist Republic of Vietnam is also a contracting party, this representative or agent is not permitted to register the mark unless it is so agreed by the mark owner, unless a justifiable reason is available.

#### **Article 88. Right to register geographical indications**

The right to register Vietnamese geographical indications belongs to the State.

The State shall permit organizations and individuals producing products bearing geographical indications, collective organizations representing such organizations or individuals, and administrative bodies of localities to which such geographical indications pertain, to exercise the right to register geographical indications. Persons who exercise the right to register geographical indications shall not be eligible to become owners of such geographical indications.

#### **Article 89. Methods of submitting an application for registration of establishment of industrial property rights**

1. Vietnamese organizations and individuals, foreign individuals permanently residing in Vietnam, and foreign organizations and individuals having production or business establishments in Vietnam shall submit applications for registration of establishment of industrial property rights either directly or through their lawful representatives in Vietnam.

2. Foreign individuals not permanently residing in Vietnam and foreign organizations and individuals without production or business establishments in Vietnam shall submit applications for registration of establishment of industrial property rights through their lawful representatives in Vietnam.

#### **Article 90. First-come and first-served principles**

1. Where many applications are filed for registration of the same or similar inventions or for registration of industrial designs identical to or slightly different from one another, the protection certificate may only be granted to the valid application submitted at the earliest priority or filing date among applications satisfying all the conditions for the grant of a protection certificate.
2. Where there are many applications filed by different persons for registration of identical or confusingly similar marks for identical or similar products or services, or where there are many applications filed by the same person for registration of identical marks for identical products or services, the protection certificate may only be granted for the mark in the valid application submitted at the earliest priority or filing date among applications satisfying all the conditions for the grant of a protection certificate.
3. Where there are many registration applications specified in Clauses 1 and 2 of this Article and satisfying all the conditions for the grant of a protection certificate and having the same earliest priority or filing date, the protection certificate may only be granted for the object of a single application out of these applications under an agreement of all applicants. Without such agreement, all relevant objects of these applications will be refused for the grant of a protection certificate.

#### **Article 91. Priority principle**

1. An applicant for registration of an invention, industrial design or mark may claim priority on the basis of the first application for registration of protection of the same object if the following conditions are fully satisfied:
  - a) The first application was filed in Vietnam or in a country being a contracting party to a treaty of which the Socialist Republic of Vietnam is also a member, containing provisions on priority right, or in a country which has agreed with Vietnam to apply such provisions;
  - b) The applicant is a citizen of Vietnam or of a country defined in Point a of this Clause, who resides or has a production or business establishment in Vietnam or in a country defined in Point a of this Clause;
  - c) The claim for the priority right is clearly stated in the application and a copy of the first application certified by the receiving office is enclosed;
  - d) The application is filed within the time-limit provided for in a treaty of which Vietnam is a member.
2. In an application for registration of an invention, industrial design or mark, the applicant may claim the priority right on the basis of different earlier applications, provided that the similarity between the contents of such earlier applications and the present application are indicated.
3. An application for registration of industrial property which is granted the priority right shall bear the priority date being the filing date of the first application.

#### **Article 92. Protection certificates**

1. A protection certificate shall recognize the owner of the invention, industrial design, layout design or mark (hereinafter all referred to as protection certificate owners); the author of the invention, industrial design or layout design; and the object, scope and term of protection.
2. A protection certificate of a geographical indication shall record the organization managing such geographical indication, the organization or individual having the right to use such

geographical indication, the protected geographical indication, the particular characteristics of products bearing such geographical indication, and the particular characteristics of geographical conditions and geographical areas bearing such geographical indication.

3. Protection certificate shall include an invention patent, utility solution patent, and industrial design patent, certificate of registered design of semi-conductor integrated circuits, certificate of registered mark and certificate of registered geographical indication.

#### **Article 93. Validity of protection certificates**

1. Protection certificates shall be valid throughout the entire territory of Vietnam.
2. A patent on an invention shall be valid from the issuing date until the end of twenty (20) years after the submission date.
3. A patent on a utility solution shall be valid from the issuing date until the end of ten (10) years after the submission date.
4. A patent on an industrial design shall be valid from the issuing date until the end of five (5) years after the submission date and may be renewed for two consecutive terms, each of which shall have a period of five (5) more years.
5. A certificate of registered design of semi-conducting integrated circuits shall be valid from the issuing date until the earliest date among the following:
  - a) The end of ten (10) years after the submission date;
  - b) The end of ten (10) years as of the date on which the layout design was first used for a commercial purpose anywhere in the world by a person who holds the registration right or his/her licensee;
  - c) The end of fifteen (15) years as of the date on which the layout design was created.
6. A registration certificate of mark shall be valid from the issuing date until the end of ten (10) years as from the submission date and may be renewed for many consecutive terms, each of which shall have ten (10) years.
7. A registration certificate of geographical indication shall have indefinite validity as from the issuing date.

#### **Article 94. Retention and extension of validity of protection certificates**

1. In order to maintain the validity of a patent on an invention or a utility solution, the owner must pay a validity retention fee.
2. In order to have the validity of an industrial design patent or a registration certificate of mark extended, the owner must pay a validity extension fee.
3. Fee rate and procedure for maintaining or extending validity of protection certificates shall be stipulated by the Government.

#### **Article 95. Invalidation of property protection certificates**

1. A property protection certificate shall be invalidated in the following cases:
  - a) The owner fails to pay the regulated maintenance or extension fee;
  - b) The owner declares a relinquishment of the industrial property rights;



- c) The owner no longer exists, or the owner of a registration certificate of mark is no longer engaged in business activities and does not have a lawful heir;
- d) The mark has not been used by its owner or the licensee without any justifiable reason for five (05) consecutive years prior to a request for termination of validity, except where use is commenced or resumed at least three (03) months before the request for termination;
- dd) The owner of a certificate of collective mark registration fails to supervise or ineffectively supervises the implementation of the regulations on use of the collective mark;
- e) The owner of a certificate of certification mark registration violates the regulations on use of the certification mark or fails to supervise or ineffectively supervises the implementation of such regulations;
- g) The geographical prerequisites to the reputation, quality or special characteristics of products bearing a geographical indication have changed, which results in the loss of such reputation, quality or attribute of products.

2. Where the owner of a patent fails to pay the maintenance fee by the regulated deadline, such a patent shall be automatically invalidated as from the first day of the first year for which the maintenance fee has not been paid. The regulatory body for industrial property rights shall record such invalidation in the National Register of Industrial Property and publish it in the Official Gazette of Industrial Property.

3. Where the owner of a patent declares relinquishment of the industrial property right as stipulated at Point b Clause 1 of this Article, the regulatory body for industrial property rights shall decide to terminate the validity of such a patent from the receipt of the patent owner's declaration.

4. Where the owner of a patent declares relinquishment of the industrial property right as stipulated at Point b Clause 1 of this Article, the regulatory body for industrial property rights shall decide to terminate the validity of such a patent from the receipt of the patent owner's declaration.

After considering the request for invalidation of a patent and the opinions of the parties involved, the regulatory agency for industrial property rights shall issue a decision to void a patent or make an objection against this request.

5. The provisions set out in Clauses 1, 3 and 4 of this Article shall also apply to the invalidation of international registrations of marks.

#### **Article 96. Cancellation of effectiveness of protection certificates**

1. A protection certificate shall be entirely invalidated in the following cases:

- a) The applicant for registration does not have the right and is not entitled to transfer the right to register the invention, industrial design, layout design or mark;
- b) The object of the industrial property protection may fail to satisfy the requirements for protection at the time the protection certificate is granted.

2. A protection certificate shall be partly invalidated as to the part which failed to satisfy the conditions for being protected.

3. Any organization or individual may request the regulatory body for industrial property rights to invalidate a protection certificate in the cases specified in Clauses 1 and 2 of this Article, provided that such applicant has to pay fees and charges.

The valid term in which the right to request an invalidation of a protection certificate can be exercised shall be the whole term of such protection. With respect to marks, such valid term shall be five (5) years from the grant date, except where the protection certificate was granted to the applicant due to any deliberate dishonesty.

4. Based on the result of the examination of a request for invalidation of a protection certificate and the opinions of the parties involved, the regulatory body for industrial property rights shall issue a decision on entire or partial invalidation of a protection certificate or notify an objection to invalidating a protection certificate.

5. The provisions set out in Clauses 1, 2, 3 and 4 of this Article shall also apply to the invalidation of international registrations of marks.

#### **Article 97. Amendments to protection titles**

1. The owner of a protection certificate shall have the right to request the regulatory body for industrial property rights to make amendments to the following information enclosed in such a protection certificate, provided that the prescribed fees and charge are paid:

a) Make adjustments and error corrections to the name and address of the author or owner of the protection certificate;

b) Make any amendment to the description of features, particular characteristics, quality or geographical conditions provided on a geographical indication; make amendments to the regulations on use of a collective or certification mark.

2. At the request of the owner of a protection certificate, the regulatory body for industrial property rights must correct errors made by this body in such a protection certificate. In that case, the owner of protection certificate shall not be liable for any fee and charge.

3. The owner of a protection certificate may request the regulatory body for industrial property rights to narrow the scope of industrial property rights. In such a case, the substantive content of the equivalent application for industrial property registration shall be re-examined while the applicant must pay a fee for this.

#### **Article 98. National Register of Industrial Property**

1. The National Register of Industrial Property means the written record of the establishment, change and transfer of industrial property rights to inventions, industrial designs, layout designs, marks and geographical indications in accordance with this Law.

2. Decisions on issues relating to a protection certificate such as grant, principal contents, amendments, termination, invalidation, registration of the contract for transfer of industrial property rights shall all be recorded in the National Register of Industrial Property.

3. The National Register of Industrial Property shall be compiled and kept by the regulatory body for industrial property rights.

#### **Article 99. Public announcement of decisions relating to protection certificates**

Decisions on the grant, termination, annulment of or adjustment to the certificate of industrial property protection shall be publicly announced by the regulatory body for industrial property rights in the Official Gazette of Industrial Property within sixty (60) days as from the date on which such decisions are granted.

## **Section 2. APPLICATION FOR REGISTRATION OF INDUSTRIAL PROPERTY**

### **Article 100. General requirements that applications for registration of industrial property must satisfy**

1. An application form for industrial property registration shall contain the followings:

- a) A declaration made by filling in the given form;
- b) Relevant documents, samples and information about the object that requires the property protection as specified in Articles 102 to 106 enshrined in this Law;
- c) Power of attorney, if the application is filed through a representative;
- d) A proof of the applicant's legal right to apply for the registration, if such right is received from another person;
- dd) A proof of the priority right, if the applicant requests the claim of that right;
- e) Fee or charge payment receipts.

2. Industrial property registration applications and source documents that prove transactions between the applicant and the regulatory body for industrial property rights shall be made in Vietnamese, except for the following documents which may be made in another language but shall be translated into Vietnamese at the request of the regulatory body for industrial property rights:

- a) Power of attorney;
- b) A proof of the applicant's registration right;
- c) A proof of the applicant's priority right;
- d) Other supportive documents.

3. A proof of the priority right shall include:

- a) A duplicate application or a copy of the first application certified by the first receiving office;
- b) Transfer deed of the priority right if such right is acquired from another person.

### **Article 101. Requirement for the consistency of an application for industrial property registration**

1. Each application for industrial property registration shall request the grant of only one protection certificate for a single industrial property object, except for the cases specified in Clauses 2, 3 and 4 of this Article.

2. Each registration application may request the grant of one invention patent or one utility solution patent for a group of inventions that are technically linked to form a single common inventive concept.

3. Each registration application may request the grant of one industrial design patent for several industrial designs in the following cases:

- a) Industrial designs of a set of products which consist of numerous items expressing a single common inventive concept and that are used together or serve a common purpose;
- b) An industrial design attached by one or more variants of such industrial design that are based on a single common inventive concept and are not different from such an industrial design.

4. Each registration application may request the grant of one registration certificate of mark for one mark to be used for one or more different goods or services.

#### **Article 102. Requirements that an application for registration of inventions must satisfy**

1. Documents that are provided to identify an invention registered for protection in an application for invention registration shall include a description of the invention and an abstract of the invention. The invention description shall be divided into a section for invention details and another for the scope of protection.

2. The description of an invention must satisfy the following requirements:

- a) Fully and clearly disclose the nature of the invention to the extent that such invention may be realized by a person with an average technical knowledge;
- b) Briefly explain attached drawings, if this is required to further clarify the nature of the invention;
- c) Clarify the novelty, inventive competence and industrial applicability of that invention.

3. The scope of protection of an invention shall be expressed in the form of a combination of technical specifications which are necessary and sufficient to identify the scope of the rights to such invention, as well as compatible with the description of invention and attached drawings.

4. The abstract of an invention must disclose the principal nature of such invention.

#### **Article 103. Requirement for an application for registration of industrial designs**

1. Documents that are provided to identify an industrial design which needs to be protected in an application for registration of an industrial design shall include a description and a set of photos or drawings of such industrial design. The industrial design description shall consist of a section for a description and another for the scope of protection of such industrial design.

2. The descriptive section of an industrial design must satisfy the following conditions:

- a) Fully disclose all features conveying the nature of the industrial design and clearly identify features which are new and different from an industrial design that is known to be the least different, and are identical to the set of photos or drawings;
- b) Where the application for registration of the industrial design consists of variants, the descriptive section must fully show these variants and clearly identify distinctions between the principal variant and others;
- c) Where the industrial design described in the registration application is that of a set of products, the descriptive section must fully show features of each product included in the set.

3. The section reserved for the description of scope of protection of an industrial design must clearly define the shape or configuration which needs to be protected, including those which are new and different from similar known industrial designs.
4. The set of photos and drawings must fully define the shape or configuration of the industrial design.

**Article 104. Requirements that an application for registration of layout designs must satisfy**

Documents, samples and information provided to identify a layout design which needs to be registered for protection in an application for registration of a layout design shall include:

1. Drawings and photos of the layout-design.
2. Information on the functions and structure of semi-conductor integrated circuits produced under the layout design.
3. Samples of semi-conductor integrated circuits produced under the layout design, if such layout design has been used for the commercial purpose.

**Article 105. Requirements that an applications for registration of marks must satisfy**

1. Documents, samples and information provided to identify a mark which needs to be registered for protection in an application for registration of a mark shall include:

- a) A sample of the mark and a list of goods or services bearing the mark;
  - b) Regulations on use of collective or certification marks.
2. The sample of the mark must be described in order to clarify elements of the mark and the comprehensive meaning of the mark, if any; where the mark consists of words or phrases of hieroglyphic languages, such words or phrases must be transcribed; where the mark consists of words or phrases in a foreign language, such words or phrases must be translated into Vietnamese.
3. Goods or services listed in an application for registration of a mark must be classified into appropriate groups in accordance with the Classification List under the Nice Agreement on the International Classification of Goods and Services for the purpose of mark registration, and published by the regulatory body for industrial property rights.
4. The regulations on use of collective marks shall contain the following principal contents:
- a) Name, address, grounds of establishment and operation of the collective organization, namely the owner of the mark;
  - b) Criteria for becoming a member of the collective organization;
  - c) List of organizations and individuals eligible to use the mark;
  - d) Requirements set out for use of the mark;
  - dd) Measures to be taken to deal with any infringement.
5. The regulations on use of certification marks shall contain the following principal contents:
- a) The organization or individual considered as the mark owner;
  - b) Requirements for use of the mark;

- c) Characteristics of goods or services certified by the mark;
- d) Methods of evaluating characteristics of goods or services and methods of controlling the use of the mark;
- dd) Expenses to be paid by the mark user for certification and protection of the mark, if any.

**Article 106. Requirements that an application for registration of geographical indications must satisfy**

1. Documents, samples and information provided to identify a geographical indication which needs to be registered for protection in an application for registration of a geographical indication shall include:

- a) The name or sign considered as the geographical indication;
- b) The product bearing the geographical indications;
- c) A description of particular characteristics and quality, or reputation of the product bearing the geographical indications, and particular natural elements constituting the particular characteristics and quality, or reputation of the product (hereinafter referred to as the description of particular characteristics);
- d) A map of the geographical area which the geographical indication refers to;
- dd) A proof of the protection of that geographical indication granted in the country of its origin if it comes from a foreign country.

2. The description of peculiar characteristics must contain the following principal contents:

- a) The description of the relevant product including raw materials, and physical, chemical, microbiological, perceptible and organoleptic properties of the product;
- b) Method of identification of the geographical area bearing the geographical indication;
- c) A proof of origin of the product from such geographical area which is of the equivalent meaning as stipulated in Article 79 of this Law;
- d) A description of local and stable methods of production and processing;
- dd) Information on the relationship between the particular characteristics and quality, or reputation of the product and the geographical conditions as stipulated in Article 79 of this Law;
- e) Information on the mechanism of self-control of the particular characteristics or quality of the product.

**Article 107. Authorization for representation to carry out procedures for industrial property rights**

1. Authorization for carrying out procedures for the establishment, maintenance, extension, amendment, termination and invalidation of protection titles must be obtained in writing in the form of a power of attorney.

2. A power of attorney must contain the following principal contents:

- a) Full name and address of the principal and attorney-in-fact;
- b) Scope of authorization;

- c) Valid term of authorization;
- d) Issuing date;
- dd) Signature and stamp (if any) of the principal.

3. A power of attorney without the expiry date shall be considered valid indefinitely, and the validity shall be terminated only when the principal declares its termination.

### **Section 3. PROCEDURES FOR PROCESSING APPLICATIONS FOR REGISTRATION OF INDUSTRIAL PROPERTY AND FOR GRANT OF PROTECTION CERTIFICATES**

#### **Article 108. Receipt of applications for industrial property registration, and filing dates**

1. An application for registration of industrial property shall only be received by the competent authority for industrial property rights if the application consists of a minimum of the following documents and information:

- a) A declaration for registration of an invention, industrial design, layout design, mark or geographical indication, which provides sufficient information to identify the applicant, a sample of the mark, a list of goods or services bearing the mark in the case of the application for a mark;
- b) Description, including the scope of protection, in the case of an application for registration of an invention; a set of photos and drawings and a description, in the case of an application for registration of an industrial design; and a description of particular characteristics of a product bearing a geographical indication, in the case of an application for registration of a geographical indication;
- e) Fee payment receipts.

2. The filing date shall be the date on which the application is received by the competent authority for industrial property rights, or the international filing date in the case of an application conforming to an international treaty.

#### **Article 109. Examination of the application form for registration of industrial property**

1. An application for registration of industrial property shall be subject to the examination of application form to evaluate its validity.

2. An application for registration of industrial property shall be considered invalid in the following cases:

- a) Its form does not meet requirements;
- b) The object described in the application is ineligible to be protected;
- c) The applicant does not have the right to make registration, including where the registration right is granted to more than one organization or individual but one or some of them do not consent to the filing;
- d) The application is in breach of regulations in terms of the filing method stipulated in Article 89 of this Law;
- dd) The applicant fails to pay fees and charges.

3. With respect to applications for registration of industrial property that fall into any case stipulated in Clause 2 of this Article, the regulatory body for industrial property rights shall carry out the following procedures:

a) Notify the intention of rejecting the valid application, in which reasons for this rejection must be clearly stating and a time-limit for the applicant's error correction or objection to such intention must be specified;

b) Notify the refusal of any valid application if the applicant does not correct errors or unacceptably carries out error correction or gives no reasonable opinions on objecting to any intention of this refusal as prescribed at Point a of this Clause;

c) Notify the refusal to grant a registration certificate of design of semi-conductor integrated circuits in case of the registration of semi-conductor integrated circuits;

d) Carry out procedures specified in Clause 4 of this Article if the applicant properly corrects errors or makes a justifiable objection to the intention to reject the valid application stipulated at Point a of this Clause.

4. Where an application for industrial property registration does not fall into a case stipulated in Clause 2 of this Article, or in a case stipulated at Point d Clause 3 of this Article, the regulatory body for industrial property rights shall issue a notice confirming the acceptance of the valid application or carry out procedures for the grant of a protection certificate and the recording of registration information in the National Register of Industrial Property as stipulated in Article 118 of this Law, which is applicable to applications for layout design registration.

5. Any rejected application for mark registration under the provisions set out in Clause 3 of this Article shall be considered not to be allowed to file an application, except where they serve as grounds for the claim to priority rights.

#### **Article 110. Public announcement of applications for registration of industrial property**

1. Applications for registration of industrial property which have been verified to be valid by the regulatory body for industrial property rights shall be published in the Official Gazette of Industrial Property in accordance with the provisions of this Article.

2. Applications for registration of inventions shall be published in the 19th month as from the filing date or the specified date on which the priority right is granted or at an earlier time, which depends on the request of the applicant.

3. Applications for registration of industrial designs, marks or geographical indications shall be published within two months as from the date on which such application is verified to be valid.

4. Applications for registration of layout designs shall be released in the form of direct access at the competent authority for industrial property rights but the reproduction is not permitted.

Competent authorities and parties involved shall be only granted a permission to have access to the confidential information provided in an application when they are carrying out procedures for invalidating a protection certificate or handling any infringement of property rights.

Principal information on an application for registration of a layout design and the protection certificate of such layout design shall be disclosed within two months as from the date of grant of such protection certificate.



### **Article 111. Confidentiality of applications for registration of inventions and industrial designs prior to public announcement**

1. Before applications for registration of inventions and industrial designs are published in the Official Gazette of Industrial Property, the regulatory body for industrial property rights must keep provided information confidential.
2. Official and civil servants of the regulatory body for industrial property rights who disclose information in applications for registration of inventions and industrial designs shall be disciplined; if the disclosure of information causes loss and damage to applicants, defaulting persons must be liable to pay compensation therefor in accordance with laws.

### **Article 112. Third party opinions on the grant of protection certificates**

From the date on which an application for registration of industrial property is published in the Official Gazette of Industrial Property to the date before a decision on grant of a protection certificate is made, any third party shall have the right to express their opinions on the grant or refusal to grant a protection certificate to the competent authority for industrial property rights. Such opinions must be in writing and enclose documents or quote the source of information.

### **Article 113. Request for substantive examination of applications for registration of inventions**

1. Within forty two (42) months after the filing date or a specified date on which the priority is given, an applicant or any third party may request the competent authority for industrial property rights to substantively examine the submitted application provided that this petitioner shall pay substantive examination fee.
2. The time-limit for making a request for substantive examination of an application for registration of an invention in which a request for a utility solution patent is also included shall be thirty six (36) months from the filing date or the specified date on which the priority right is granted to the beneficiary.
3. Where no request for substantive examination is submitted within the time limit specified in Clauses 1 and 2 of this Article, the application for registration of the invention shall be deemed to have been withdrawn by the end of that time limit.

### **Article 114. Substantive examination of applications for registration of industrial property**

1. The following applications for registration of industrial property shall be substantively examined for evaluation of the eligibility for grant of protection certificates for the object stated in such applications under protection conditions and for determination of the respective scope of protection:
  - a) Applications for registration of inventions which have already been verified to be valid and involve requests for substantive examination which are filed in accordance with regulations;
  - b) Applications for registration of industrial designs, marks and geographical indications which have been verified to be valid.
2. Applications for registration of layout designs shall not be substantively examined.

### **Article 115. Amendment, modification, division and conversion of applications for registration of industrial property**

1. An applicant shall have the following rights before the competent authority for industrial property rights notifies a refusal or decides to grant a protection certificate:
  - a) To amend or modify the application;
  - b) To divide the application;
  - c) To request the recording of changes in name or address of the applicant;
  - d) To request the recording of change of the applicant due to the application transfer carried out under a contract, bequest or inheritance, or under a decision of a competent agency;
  - dd) To convert an application for registration of an invention involving a request for an invention patent into an application for registration of an invention involving a request for a utility solution patent, and vice versa.
2. The applicants for completion of the procedures stipulated in Clause 1 of this Article must pay fees and charges.
3. Any amendment or modification of an application for registration of industrial property must not expand the scope of the object already disclosed or stated in such application, and must not change the nature of the object that need a registration stated in the application and must ensure the consistency of the application.
4. In the case of division of an application, the filing date of the split application shall be determined following the filing date of the original application.

#### **Article 116. Withdrawal of applications for registration of industrial property**

1. Before the competent authority for industrial property rights decides or refuses to grant a protection title, the applicant shall have the right to make a written declaration on the withdrawal of the application for registration of industrial property in his or her own name or through an industrial property representation service supplier, provided that a power of attorney clearly states authorization for withdrawal of the application.
2. As from the time when an applicant declares the withdrawal of an application, all further procedures related to such application shall be halted; paid fees and charges relating to the procedures which have not yet been commenced shall be refunded to the applicant at the applicant's request.
3. All applications for registration of industrial designs which have been withdrawn or are deemed to have been withdrawn before their publication and all applications for registration of marks which have been withdrawn shall be deemed not to have been filed, except where they serve as grounds for claims to the priority right.

#### **Article 117. Refusal to grant protection certificates**

1. An application for registration of an invention, industrial design, mark or geographical indication, and for the grant of a protection certificate shall be refused in the following cases:
  - a) There are grounds to affirm that the object stated in the application does not fully satisfy the conditions for protection;
  - b) The application satisfies the conditions for the grant of a protection certificate but does not have the earliest filing date or specified date on which the priority is granted as to the case stipulated in Clause 1 of Article 90 of this Law;

c) The application falls into a case stipulated in Clause 2 of Article 90 of this Law but fails to reach the consensus of all interested applicants.

2. An application form for registration and grant of a layout design protection which does not fulfill the requirements stipulated in Article 109 of this Law shall be refused.

Where an application for registration of industrial property falls into the cases stipulated in Clauses 1 and 2 of this Article, the competent authority for industrial property rights shall carry out the following procedures:

a) Notify an intention to refuse to grant a protection certificate, which must clearly state the reasons therefor and set a time-limit for the applicant to make an objection to such intention;

b) Notify the refusal to grant a protection certificate if the applicant makes no objection or makes unjustifiable objection to the intention to refuse the application as stipulated at Point a of this Clause;

c) Grant a protection certificate and keep a record of it into the National Register of Industrial Property according to the provisions specified in Article 118 of this Law if the applicant has made a justifiable objection to the intention to refuse the application as stipulated at Point a of this Clause.

4. Where an objection is made to the intention of granting a protection certificate, the matters subject to the objection provided in the relevant application for registration of industrial property shall be re-examined.

#### **Article 118. Grant of protection certificates and entry into the register**

Where an application for registration of industrial property does not fall into the cases in which the grant of protection certificates are refused as stipulated in Clauses 1, 2 and Point b Clause 3 of Article 117 of this Law and the applicant has already paid the fee, the competent authority for industrial property rights shall decide to grant a protection certificate and keep a record of it in the National Register of Industrial Property.

#### **Article 119. Time-limit for processing applications for registration of industrial property**

1. An application for registration of industrial property shall have its form examined within a period of one month from the application filing date.

2. An application for registration of industrial property shall be substantively examined within the following time-limits:

a) In respect of an invention, the time limit does not exceed a period of eighteen (18) months from the date of its publication, if a request for substantive examination is filed before the date of publication of the application, or as from the date of receipt of a request for substantive examination if such request is filed after the date of publication of the application;

b) In respect of a mark, the time limit does not exceed nine months from the date of application publication;

c) In respect of an industrial design, the time limit does not exceed seven months from the date of application publication;

d) In respect of a geographical indication, the time limit does not exceed six months from the date of application publication.

3. The time limit for re-examination of an industrial property registration application is equal to two-thirds of the time limit for the initial examination and may, in complicated cases, be prolonged but must not exceed the time limit for the initial examination.
4. The duration for modification or revision of applications by applicants will not be counted into the time limit specified in Clause 1, 2 or 3 of this Article. The time limit for processing requests for modification or revision of applications must not exceed one-third of the corresponding time limit specified in Clause 1 or 2 of this Article.

#### **Section 4. INTERNATIONAL APPLICATIONS AND PROCESSING OF INTERNATIONAL APPLICATIONS**

##### **Article 120. International applications and processing of international applications**

1. Applications for registration of industrial property filed under a treaty of which the Socialist Republic of Vietnam is a signatory shall be collectively referred to as international applications.
2. International applications and processing thereof shall comply with the relevant treaties.
3. The Government shall provide instructions on the implementation of provisions set out in relevant treaties on international applications, and on the order and procedure for processing thereof in compliance with the principles stipulated in this Chapter.

#### **Chapter IX**

#### **OWNER AND CONTENT OF INDUSTRIAL PROPERTY RIGHTS, AND LIMITATION ON INDUSTRIAL PROPERTY RIGHTS**

##### **Section 1. OWNER AND CONTENT OF INDUSTRIAL PROPERTY RIGHTS**

##### **Article 121. Owner of industrial property objects**

1. The owner of an invention, industrial design or layout design means an organization or individual who is granted a protection certificate for the respective industrial property object by the competent authority.

Owner of a mark means an organization or individual who is granted a protection certificate to such mark by the competent authority or who owns an internationally registered mark recognized by the competent authority or who owns a well known mark.

2. Owner of a trade name means an organization or individual who lawfully uses such trade name in their business activities.
3. Owner of a trade secret means an organization or individual who has lawfully acquired such trade secret and kept it secret. A trade secret acquired by an employee or a performer of an assigned task during the performance of the hired job or assigned task shall be owned by the employer or the task assigner, unless otherwise agreed by the parties.
4. The State is the owner of geographical indications of Vietnam.

The State shall grant the right to use geographical indications to organizations or individuals who manufacture products bearing such geographical indications in relevant localities and market such products. The State shall directly exercise the right to manage geographical indications or grant that right to organizations representing the interests of all organizations or individuals granted the right to use geographical indications.

## **Article 122. Author of inventions, industrial designs and layout designs and authors' right**

1. The author of an invention, industrial design or layout design means the person who has personally created such industrial property object. Where two or more persons have jointly created an industrial property object, they shall be considered co-authors.

2. Moral rights of authors of inventions, industrial designs and layout designs shall include the following rights:

a) The right to be named the author in the exclusive patent on their invention, utility solution, industrial design or in the certificate of registered design of semi-conductor integrated circuits;

b) The right to be acknowledged as authors in documents in which inventions, industrial designs or layout designs are published or launched.

3. Economic rights of authors of inventions, industrial designs and layout designs are the rights to receive the remuneration as stipulated in Article 135 of this Law.

## **Article 123. Rights of owners of industrial property objects**

1. Owners of industrial property objects shall have the following economic rights:

a) The right to use or authorize others to use industrial property objects in accordance with the provisions of Article 124 and Chapter X of this Law;

b) The right to prevent others from using industrial property objects in accordance with the provisions of Article 125 of this Law;

c) The right to decide matters relating to industrial property objects in accordance with the provisions of Chapter X of this Law.

2. Organizations and individuals who are granted by the State the right to use or the right to manage geographical indications according to the provisions of Clause 4 of Article 121 of this Law shall have the following rights:

a) Organizations which are granted the right to manage geographical indications may permit other persons to use such geographical indications according to the provisions of Point a Clause 1 of this Article;

b) Organizations and individuals who are granted the right to use or organizations who are granted the right to manage geographical indications may prevent other persons from using such geographical indications according to the provisions of Point b Clause 1 of this Article.

## **Article 124. Use of industrial property objects**

1. Use of an invention means the performance of the following acts:

a) Manufacturing the protected product;

b) Applying the protected process;

c) Making best use of utilities of the protected product or the product manufactured under the protected process;

d) Launching, advertising, offering or storing for the purpose of circulating the products stipulated at Point c of this Clause;

dd) Importing the products stipulated in at Point c of this Clause.

2. Use of an industrial design means the performance of the following acts:

a) Manufacturing products with a shape or configuration protected by the industrial design patent;

(b) Launching, advertising, offering or storing for the purpose of circulating products stipulated at Point c of this Clause;

c) Importing products stipulated at Point a of this Clause.

3. Use of a layout design means the performance of the following acts:

a) Reproducing the layout design; manufacturing semi-conductor integrated circuits under the patented layout design;

b) Selling, leasing, advertising, offering or storing copies of the protected layout design, semi-conductor integrated circuits manufactured under the protected layout design or commodities containing such semi-conductor integrated circuits;

c) Importing copies of the protected layout design, semi-conductor integrated circuits manufactured under the protected layout-design or commodities containing such semi-conductor integrated circuits.

4. Use of a trade secret means the performance of the following acts:

a) Applying the trade secret to the manufacture of products and the provision of services or the trading of goods;

b) Selling, advertising, stocking for the purpose of selling, or importing products manufactured by the application of the trade secret.

5. Use of a mark means the performance of the following acts:

a) Affixing the copyrighted mark on goods, packages, facilities, means of service provision or documents in business activities;

b) Circulating, offering, advertising or stocking for the purpose of selling goods bearing the protected mark;

c) Importing goods or services bearing the protected mark.

6. Use of a trade name means the performance of acts for commercial purposes by calling the trade name in business activities, or using the trade name to write on documents, signboards, products, goods, packages and means of service provision or advertisement.

7. Use of a geographical indication means the performance of the following acts:

a) Affixing the protected geographical indication to goods or packages, facilities, and documents in business activities;

b) Circulating, offering, advertising and storing for the purpose of selling goods bearing the protected geographical indication;

c) Importing goods bearing the protected geographical indication.

## **Article 125. Right to prevent others from using industrial property objects**

1. Owners of industrial property objects as well as organizations and individuals granted the right to use or the right to manage geographical indications shall have the right to prevent others from using such industrial property objects unless such use falls into the cases stipulated in Clauses 2 and 3 of this Article.

2. Owners of industrial property objects as well as organizations and individuals granted the right to use or the right to manage geographical indications shall not have the right to prevent others from performing the following acts:

a) Using inventions, industrial designs or layout designs to serve the personal or non-commercial purposes, or to aim at evaluation, analysis, research, teaching, testing, trial production or information collection for the purpose of carrying out procedures for application for licenses for production, importation or circulation of products;

b) Circulating, importing, making best use of utilities of products which were lawfully launched to the market including overseas markets, except for products that are launched to the overseas markets by any other person other than the mark owners or their licensees;

c) Using inventions, industrial designs or layout designs only for the purpose of maintaining the operation of foreign means of transport in transit or temporarily staying in the territory of Vietnam;

d) Using inventions or industrial designs patented by the previous person according to the provisions of Article 134 of this Law;

dd) Using inventions patented by persons authorized by the competent authority according to the provisions of Articles 145 and 146 of this Law;

e) Using layout designs without knowing or having the obligation to know that such layout designs are patented;

g) Using marks the same as or similar to protected geographical indications where such marks have acquired protection in an honest manner before the date of filing the application for registration of such geographical indication;

h) Using in an honest manner personal names, marks describing type, quantity, quality, utility, value, geographical origin and other properties of goods or services.

3. Owners of trade secrets shall not have the right to prevent others from performing the following acts:

a) Disclosing or using trade secrets acquired without knowing or having the obligation to know that they were unlawfully acquired by others;

b) Disclosing secret data in order to protect the public according to the provisions of Clause 1 of Article 128 of this Law;

c) Using secret data stipulated in Article 128 of this Law which do not serve commercial purposes;

d) Disclosing or using trade secrets created independently;

dd) Disclosing or using trade secrets obtained by analyzing or evaluating lawfully distributed products, unless otherwise agreed upon by analyzers or evaluators and owners of such trade secrets or sellers of such products.

## **Article 126. Acts of infringement of rights to inventions, industrial designs and layout designs**

The following acts shall be regarded as infringements of rights of owners of inventions, industrial designs and layout designs:

1. Using protected inventions, protected industrial designs or industrial designs insignificantly different from protected industrial designs, or protected layout designs or any original part thereof within the valid term of a protection certificate without permission from the owners.
2. Using inventions, industrial designs and layout designs without paying compensation according to the provisions on provisional rights in Article 131 of this Law.

## **Article 127. Acts of infringement of the right to trade secrets**

1. The following acts shall be deemed infringements of the right to trade secrets:

- a) Accessing or acquiring information pertaining to a trade secret by taking acts against secrecy-keeping measures applied by lawful controllers of such trade secret;
- b) Disclosing or using information pertaining to a trade secret without the permission from the owner of such trade secret;
- c) Breaching secrecy-keeping contracts or deceiving, inducing, bribing, forcing, seducing or abusing the trust of persons in charge of secrecy-keeping job in order to access, acquire or disclose a trade secret;
- d) Accessing or acquiring information pertaining to the trade secret of an applicant for the licensing of product commerce by taking acts against secrecy-keeping measures applied by competent bodies;
- dd) Using or disclosing trade secrets, while knowing or having the obligation to know that they have been acquired by others engaged in one of the acts stipulated at Points a, b, c or d of this Clause;
- e) Failing to perform the secrecy-keeping obligation stipulated in Article 128 of this Law.

2. Lawful controllers of trade secrets defined in Clause 1 of this Article include owners of trade secrets, their lawful licensees and managers of trade secrets.

## **Article 128. Obligation to maintain secrecy of test data**

1. Where the law requires applicants for the licensing of trading and circulation of pharmaceuticals or agro- chemical products to supply test results or any other data being trade secrets obtained by the considerable investment effort, and where applicants request such data to be kept secret, the competent licensing body shall be obliged to apply necessary measures so that such data is neither used for unfair commercial purposes nor disclosed, except where the disclosure is necessary to protect the public.

2. From the submission of secret data to apply for the licensing from the competent body as stipulated in Clause 1 of this Article to the end of a five-year period as from the date the applicant is granted a licence, such body is not allowed to grant any licence to any subsequent applicants if such application uses that secret data without permission from the data user, except for the cases stipulated at Point d Clause 3 of Article 125 set out in this Law.



## **Article 129. Acts of infringement of rights to marks, trade names and geographical indications**

1. The following acts, if performed without the permission of mark owners, shall be deemed to be infringements of the right to a mark:

- a) Using signs which are the same as protected marks for goods or services identical to goods or services on the registration list together with such mark;
- b) Using signs which are the same as protected marks for goods or services similar or related to those goods or services on the registration list together with such mark, if such use is likely to cause confusion as to the origin of the goods or services;
- b) Using signs which are the same as protected marks for goods or services similar or related to those goods or services on the registration list together with such mark, if such use is likely to cause confusion as to the origin of the goods or services;
- d) Using signs which are the same as or similar to well known marks, or signs in the form of translations or transcriptions of well known marks identifying any goods or services, including those that are not identical to, dissimilar or unrelated to goods or services on the list of those bearing well known marks, if such use is likely to cause confusion as to the origin of the goods or services or misleading impressions as to the relationship between users of such signs and well known mark owners.

2. All acts of using commercial indications identical or similar to, trade names of others which were used earlier for the same or similar type of goods or services, which can cause any confusion as to legal business entities, establishments or activities under such trade names shall be deemed to be infringements of the right to the trade name.

3. The following acts shall be deemed to be infringements of the right to protected geographical indications:

- a) Using protected geographical indications for products which do not satisfy the criteria of particular characteristics and quality of products bearing geographical indications, although such products originate from geographical areas bearing such geographical indication;
- b) Using protected geographical indications for products similar to products bearing geographical indications for the purpose of taking advantage of their reputation and reliability;
- c) Using any sign which is identical or similar to a protected geographical indication for products that do not originate from geographical areas bearing such geographical indication, and therefore are likely to mislead consumers into believing that such products originate from such geographical areas;
- d) Using protected geographical indications of wines or spirits for those that do not originate from geographical areas bearing such geographical indication, even where the true origin of goods is indicated or geographical indications are used in the form of translations or transcriptions, or accompanied by such words as "category," "model," "type," "imitation" or the like.

## **Article 130. Acts of unfair competition**

1. The following acts shall be deemed to be acts of unfair competition:

- a) Using commercial indications which can cause any confusion as to business entities, business activities or commercial origin of goods or services;
- b) Using commercial indications which can cause confusion as to the origin, production method, utilities, quality, quantity or other characteristics of goods or services; or as to the conditions for provision of goods or services;
- c) Using marks protected in a country which is a signatory to a treaty of which the Socialist Republic of Vietnam is a member and under which representatives or agents of owners of such marks are prohibited from using such marks, if users are representatives or agents of the mark owners and such use is not endorsed by both permission from the owner and justifiable reasons;
- d) Registering or possessing the right to use or using domain names which are confusingly the same as or similar to protected trade names or marks of others, or geographical indications without having the right to use, for the purpose of possessing such domain names, benefiting from or prejudicing the reputation and reliability of the respective mark, trade name or geographical indication.

2. Commercial indications stipulated in Clause 1 of this Article mean signs and information serving as guidelines to trading of goods or services including marks, trade names, business symbols, business slogans, geographical indications, designs of packages and/or labels of goods.

3. Acts of using commercial indications stipulated in Clause 1 of this Article include acts of attaching such commercial indications to goods, goods packages, means of service provision, business transactional documents or advertising means; and selling, advertising, stocking for the purpose of selling and importing goods identified by such commercial indications.

### **Article 131. Provisional rights to inventions, industrial designs and layout designs**

1. Where an applicant for registration of an invention or industrial design knows that such invention or industrial design is being used by another person for commercial purposes without prior use right, the applicant may notify in writing the user of the filing of the application, clearly specifying the filing date and the date of publication of the application on the Official Gazette of Industrial Property so that the user may decide to either terminate or continue such use.

2. For a layout design which has, before the grant date of the certificate of registered design of semi-conductor integrated circuits, been used for the commercial purpose by the person owning the right to registration or his or her licensee, if such person knows that such layout design is being used by another person for commercial purposes, then he or she may notify in writing the user of his or her right to registration so that the user may either terminate or continue such use.

3. Where the person notified of contents stipulated in Clauses 1 and 2 of this Article continues using such invention, industrial design or layout design, then as soon as an invention patent, utility solution patent, industrial design patent or certificate of registered design of semi-conductor integrated circuits is granted, the owner of the object shall have the right to request the user to pay compensation equivalent to the price for licensing of such invention, industrial design or layout design within the corresponding scope and valid duration of use.

## **Section 2. LIMITATIONS ON INDUSTRIAL PROPERTY RIGHTS**

### **Article 132. Restrictive factors of industrial property rights**

Industrial property rights may be limited under this Law by the following factors:

1. Right of prior users to inventions or industrial designs.
2. Obligations of owners, including:
  - a) To pay the remuneration to the authors of inventions, industrial designs or layout designs;
  - b) To use inventions or marks.
3. Transferring the right to use inventions under decisions of competent authorities.

#### **Article 133. Right to use inventions authorized by the State**

1. Ministries and ministerial-level agencies authorized by the State shall have the right, on behalf of the State, to use or allow other organizations or individuals to use inventions under their respective management to serve public and non-commercial purposes, national defence and security, disease prevention, and treatment and nutrition of the people, and to meet other urgent social needs without having to obtain any permission from invention owners or their licensees under exclusive contracts (hereinafter referred to as holders of the exclusive right to use inventions) in accordance with Articles 145 and 146 of this Law.

2. The use of inventions as prescribed in Clause 1 of this Article shall be limited within the scope of and under the conditions for licensing provided for in Clause 1 of Article 146 of this Law, except where such inventions are created by using material and technical facilities, and funds from the State Budget.

#### **Article 134. Right of prior use of inventions and industrial designs**

1. In case a person has, before the filing date or priority date (if any) of an invention or industrial design registration application, used or prepared necessary conditions for using an invention or industrial design identical to the protected invention or industrial design stated in that registration application but created independently (hereinafter referred to as prior use right holder), then after a protection certificate is granted, he/she may continue using such invention or industrial design within the scope and volume of use or use preparations without having to obtain permission of or paying compensations to the owner of the protected invention or industrial design.

The exercise of the right of prior users of inventions or industrial designs is not regarded as an infringement upon the right of invention or industrial design owners.

2. Holders of prior right to use inventions or industrial designs may not assign such right to others, unless that right is assigned together with the transfer of business or production establishments which have used or are prepared to use the inventions or industrial designs. Prior use right-holders may not expand the use scope and volume unless it is so permitted by invention or industrial design owners.

#### **Article 135. Obligation to pay remuneration to authors of inventions, industrial designs and layout designs**

1. Owners of inventions, industrial designs and layout designs shall be obliged to pay remuneration to the authors of such inventions, industrial designs and layout designs in accordance with the provisions of Clauses 2 and 3 of this Article, unless otherwise agreed upon by the parties.

2. The minimum level of remuneration payable by an owner to an author shall be regulated as follows:

a) Ten (10) per cent of the profit gained by the owner from the use of the invention, industrial design or layout design;

b) Fifteen (15) per cent of the total amount received by the owner in each payment for licensing of the invention, industrial design or layout design.

3. Where an invention, industrial design or layout design is jointly created by more than one author, the remuneration level regulated in Clause 2 of this Article shall be applicable to all co-authors. The co-authors shall enter into the mutual agreement on the division of the remuneration paid by the owner.

4. The obligation to pay remuneration to authors of inventions, industrial designs and layout designs shall have to be secured throughout the term of protection of such invention, industrial design or layout design.

### **Article 136. Obligation to use inventions and marks**

1. Owners of inventions shall be obliged to manufacture protected products or apply protected processes in their production to satisfy the requirements of national defence and security, disease prevention, and treatment and nutrition of the people or to meet other social urgent needs.

Where the needs stipulated in this clause arise but an invention owner fails to perform such obligation, the competent authority may license such invention to others without any permission from the invention owner in accordance with the provisions of Articles 145 and 146 of this Law.

2. Owners of marks shall be obliged to uninterruptedly use such marks. Where a mark has not been used for five consecutive years or more, the right to own such mark shall be invalidated in accordance with the provisions set out in Article 95 of this Law.

### **Article 137. Obligation to authorize the use of principal inventions for the purpose of using dependent inventions**

1. A dependent invention means an invention created on the basis of another invention (hereinafter referred to as the principal invention) and may only be used on condition that the principal invention is also used.

2. Where the owner of a dependent invention can prove that his or her invention makes an important technical advance as compared with the principal invention and has great economic significance, he or she may request the owner of the principal invention to license such principal invention at a reasonable price and set out proper binding terms and conditions.

Where the owner of a principal invention fails to satisfy the request of the owner of a dependent invention without any justifiable reason, the competent authority may license such invention to the owner of the dependent invention without any permission from the owner of the principal invention in accordance with the provisions of Articles 145 and 146 of this Law.

## **Chapter X**

### **TRANSFER OF INDUSTRIAL PROPERTY RIGHTS**

#### **Section 1. ASSIGNMENT OF INDUSTRIAL PROPERTY RIGHTS**

#### **Article 138. General provisions on assignment of industrial property rights**



**CÔNG TY LUẬT SỞ HỮU TRÍ TUỆ TRƯỜNG XUÂN**

Tầng 11, Tòa C, Hồ Gươm Plaza, số 102 đường Trần Phú,  
quận Hà Đông, Hà Nội, Việt Nam

Tel . 84-4 35 57 55 99 Fax . 84-4 39 43 44 79  
Email. nhanhieue@ageless.vn Web. www.ageless.vn

1. Assignment of an industrial property right means the transfer of ownership right by the owner of such industrial property right to another organization or individual.
2. An assignment of an industrial property right must be established in the form of a written contract (hereinafter referred to as a contract for the assignment of industrial property right).

#### **Article 139. Restrictions on assignment of industrial property rights**

1. Industrial property right-owners may only assign their rights within the scope of protection.
2. Rights to geographical indications shall not be assignable.
3. Rights to trade names may only be assigned together with the transfer of the entire business establishment and business activities identified under such trade name.
4. The assignment of the rights to marks must not cause any confusion as to properties or origins of goods or services bearing such marks.
5. Rights to marks may only be assigned to organizations or individuals who satisfy conditions for persons having the right to register such marks.

#### **Article 140. Contents of the contract for industrial property right assignment**

A contract for industrial property right assignment must contain the following principal contents:

1. Full names and addresses of the assignor and of the assignee.
2. Grounds for the assignment.
3. Assignment price.
4. Rights and obligations of the assignor and the assignee.

### **Section 2. LICENSING OF INDUSTRIAL PROPERTY RIGHTS**

#### **Article 141. General provisions on licensing of industrial property rights**

1. Licensing of an industrial property object means the permission granted by the owner of such industrial property object to another organization or individual to use the industrial property object within the scope of the owner's right.
2. Licensing of industrial property objects must be established in the form of a written contract (hereinafter referred to as a contract to license industrial property object).

#### **Article 142. Restrictions on licensing of industrial property objects**

1. The right to use geographical indications or trade names shall not be licensable.
2. The right to use collective marks must not be licensed to organizations or individuals other than members of the owners of such collective marks.
3. The licensee must not enter into a licensing sub-contract with a third party, unless it is so permitted by the licensor.
4. Mark licensees shall be obliged to write indications on goods and packages to confirm that such goods are manufactured under the contract for the use of a specific mark.

5. Invention licensees acting under exclusive contracts shall be obliged to use such inventions in the same manner as the invention owners according to the provisions of Clause 1 of Article 136 set out in this Law.

#### **Article 143. Types of the contract to license industrial property object**

The contract to license industrial property object shall include the followings:

1. An exclusive contract means a contract under which, within the licensing scope and term, the licensee shall have the exclusive right to use the licensed industrial property object while the licensor may neither enter into any contract to license the industrial property object with any third party nor, without permission from the licensee, use such industrial property object.
2. A non-exclusive contract means a contract under which, within the licensing scope and term, the licensor shall still have the right to use the industrial property object and to enter into a non-exclusive contract to license the industrial property object with others.
3. A sub-contract to license the industrial property object means a contract under which the licensor is a licensee of the right to use such industrial property object as agreed upon in another contract.

#### **Article 144. Contents of the contract to license the industrial property object**

1. A contract to license the industrial property object must contain the major contents as follows:

- a) Full names and addresses of the licensor and the licensee;
- b) Grounds for licensing;
- c) Contract type;
- d) Licensing scope including limitations on use right and territorial limitations;
- dd) Contract term;
- e) Licensing price;
- g) Rights and obligations of the licensor and licensee.

2. A contract to license the industrial property object is not allowed to provide any binding provision which unreasonably restrict the right of the licensee, and in particular the following provisions which do not derive from the rights of licensors as follows:

- a) Prohibit the licensee from improving the industrial property object other than marks; bind the licensee to transfer the right at no expense to the licensor any improvement of the industrial property object made by the licensee or the right of industrial property registration or industrial property rights to such improvements;
- b) Directly or indirectly restrict the licensee from the exportation of goods produced or services provided under the contract to license the industrial property object to the territories where the licensor neither holds the respective industrial property right nor has the exclusive right to import such goods;
- c) Bind the licensee to purchase all or a certain percentage of raw materials, components or equipment from the licensor or a third party designated by the licensor which does not serve the purpose of ensuring the quality of goods produced or services provided by the licensee who acquires the right to manufacture or provide such goods or services;

d) Prohibit the licensee from complaining about or initiating lawsuits with regard to the validity of the industrial property rights or the licensor's right to license.

3. Any clauses set out in a contract as stipulated in Clause 2 of this Article shall be automatically made defunct.

### **Section 3. COMPULSORY LICENSING OF INVENTIONS**

#### **Article 145. Grounds for compulsory licensing of inventions**

1. In the following cases, the right to use an invention may be licensed to another organization or individual under a decision made by the competent authority as defined in Clause 1 of Article 147 set out in this Law without having to ask for any permission from the holder of the exclusive right to use such invention:

a) Where such invention is used for public and non-commercial purposes or to improve national defence and security, disease prevention, and treatment and nutrition of people or other urgent needs of society;

b) Where the holder of the exclusive right to use such invention fails to fulfill the obligations to use such invention stipulated in Clause 1 of Article 136 and Clause 5 of Article 142 set out in this Law after the expiration of four years as from the date of filing the application for registration of the invention, or the expiration of three years as from the date of granting the invention patent;

c) Where a person who wishes to use the invention fails to reach an agreement with the holder of the exclusive right to enter into the contract to license such invention irrespective of efforts made within a reasonable time in negotiating a mutually acceptable price and reasonable conditions;

d) Where the holder of the exclusive right to use such invention is deemed to have performed anti-competitive practices prohibited by the law on competition.

2. The holder of the exclusive right to use an invention may request termination of the use right when the grounds for licensing stipulated in Clause 1 of this Article no longer exist and are unlikely to recur, provided that such termination shall cause damage to the licensee of the invention.

#### **Article 146. Limiting conditions of the exercise of the licensed right to inventions under a binding decision**

1. The right to use a licensed invention under a binding decision of a competent authority must comply with the following conditions:

a) Such licensed right is non-exclusive;

b) Such licensed right is only limited to a sufficient scope and duration in order to achieve objectives of the licensing, and to mainly supply such licensed inventions for domestic markets, except for the case stipulated at Point d Clause 1 Article 145 set out in this Law.

With respect to an invention in the field of semi-conductor technology, the licensing shall be only aimed at serving public and non-commercial purposes or dealing with anti-competitive practices prohibited by the law on competition;

- c) The licensee must neither assign nor sublicense such right to others, except where the assignment of the licensee's business establishment concurrently happens and the right to use such inventions are not sublicensed to others;
- d) The licensee must pay the holder of the exclusive right to use the invention an acceptable compensation, depending on the economic value of such right in each case and the compensation framework stipulated by the Government.

2. In addition to the conditions stipulated in Clause 1 of this Article, the licensed right to an invention in the case stipulated in Clause 2 of Article 137 of this Law must also satisfy the following conditions:

- a) The holder of the exclusive right to use the principal invention shall also be licensed to use dependent inventions under reasonable conditions;
- b) The licensee of the right to use the principal invention must not assign such right, except where the assignment of all rights to dependent inventions is carried out.

#### **Article 147. Authority and procedures for the licensing of the right to an invention to be carried out under a binding decision**

1. The Ministry of Science and Technology shall issue decisions on the licensing of the right to inventions at the request for the licensing in the cases stipulated at Points b, c and d, Clause 1, Article 145 of this Law.

Ministries and ministerial-level bodies shall, after consulting with the Ministry of Science and Technology, issue decisions on the licensing of the right to inventions managed under their respective authority in the case stipulated at Point a Clause 1 Article 145 of this Law.

2. Decisions on the licensing of the right to inventions must determine appropriate scope and conditions of use in accordance with the provisions set out in Article 146 of this Law.
3. The competent authority to decide on the licensing of the right to an invention must promptly notify their decision to the holder of the exclusive right to use such invention.
4. A decision on the licensing of the right to an invention or on the refusal to license the right to an invention may be faced with any complaint or lawsuit in accordance with laws.
5. The Government shall provide specific regulations on the licensing of the right to inventions as stipulated in this Article.

#### **Section 4. REGISTRATION OF THE CONTRACT FOR TRANSFER OF INDUSTRIAL PROPERTY RIGHTS**

##### **Article 148. Validity of the contract for the assignment of industrial property rights**

1. As for the industrial property rights established on the basis of registration as prescribed in the provisions of Point a Clause 3 of Article 6 set out in this Law, the contract to assign an industrial property right shall be valid only when it is registered with the competent authority for industrial property rights.
2. As for the industrial property rights established on the basis of registration according to the provisions of Point a Clause 3 Article 6 set out in this Law, the contract for the licensing of the right to an industrial property object shall be valid as agreed upon by the parties involved but



shall only apply its legal value to a third party as being registered with the competent authority for industrial property rights.

3. Validity of the contract to use an industrial property object licence shall be automatically terminated upon the termination of the licensor's industrial property rights.

#### **Article 149. Application file for registration of a contract for transfer of industrial property rights**

An application file for registration of the contract for use of an industrial property object or of the contract for assignment of an industrial property right shall be composed of:

1. A declaration for registration according to the sample form.
2. An original or a valid copy of the contract.
3. The original of the protection certificate in the case of assignment of an industrial property right.
4. The co-owners' written consent, or a written explanation of the reason for disagreement of any co-owner with the assignment of property rights, where the industrial property right is jointly owned.
5. Fee or charge payment receipts.
6. A power of attorney, if the application is filed by a representative.

#### **Article 150. Processing of application files for registration of the contract for transfer of industrial property rights**

The Government shall provide regulations on the procedures for receiving and processing application files for registration of the contract for the licensing of an industrial property object and the contract for assignment of an industrial property right.

### **Chapter XI**

#### **INDUSTRIAL PROPERTY REPRESENTATION**

#### **Article 151. Industrial property representation services**

1. Industrial property representation services shall comprise:
  - a) Representing organizations or individuals before competent authorities in the establishment and enforcement of industrial property rights;
  - b) Providing consultancy on issues related to procedures for the establishment and enforcement of industrial property rights;
  - c) Other services related to procedures for the establishment and enforcement of industrial property rights.
2. Industrial property representatives shall comprise organizations providing industrial property representation services (hereinafter referred to as industrial property representation service organizations) and individuals practicing industrial property representation within such organizations (hereinafter referred to as industrial property agents).

#### **Article 152. Scope of representative's right to industrial property**

1. Industrial property representation service organizations shall only provide services within the scope of authorization and may re-authorize other industrial property representation service organizations when they obtain written consent from the principal.
2. Industrial property representation service organizations may voluntarily waive their industrial property representation service business after having lawfully transferred all incomplete representation jobs to other industrial property representation service organizations.
3. Industrial property representatives must not perform the following activities:
  - a) Concurrently represent different parties in dispute over industrial property rights;
  - b) Withdraw applications for protection certificates, declare waiver of protection or withdraw appeals against the establishment of industrial property rights without consent from the principal;
  - c) Deceive their clients regarding the conclusion and execution of the contract for industrial property representation services.

### **Article 153. Responsibilities of industrial property representatives**

1. Industrial property representatives shall have the following responsibilities:
  - a) To clearly notify fee and charge amounts and rates related to procedures for establishment and enforcement of industrial property rights, and service charge amounts and rates according to the service charge tariff registered at the competent authority for industrial property rights;
  - b) To preserve confidentiality of information and documents related to cases in which they act as representatives;
  - c) To truthfully and fully inform the principal of all notices and requests from the competent authority to establish and enforce industrial property rights; to deliver protection certificates and other decisions to the principal in a timely manner;
  - d) To protect the rights and legitimate interests of the principal by means of promptly satisfying all requests of the competent agency that has authority to ensure that the principal shall establish and enforce the exercise of their industrial property rights;
  - dd) To notify the competent agency who has authority to establish and ensure the enforcement of industrial property rights to all changes in the name, address of and other information about the principal when necessary.
2. Industrial property representation service organizations shall be civilly liable to the principal for such representation performed by industrial property agents on behalf of such service organizations.

### **Article 154. Conditions for industrial property representation service business**

Organizations that satisfy the following conditions may provide industrial property representation services as industrial property representation service organizations:

1. Being law-practicing businesses, cooperatives or organizations, or scientific and technological service organizations lawfully established and operating, except foreign law-practicing organizations operating in Vietnam;

2. Having the function of providing industrial property representation services, which is stated in their business registration certificates or operation registration certificates (below collectively referred to as business registration certificates);
3. Their heads or persons authorized by their heads must satisfy the conditions for industrial property representation service practice, specified in Clause 1, Article 155 of this Law.

**Article 155. Conditions of industrial property representation service practices**

1. An individual who satisfies the following conditions shall be permitted to practice industrial property representation service:

- a) Having a practice certificate of industrial property representation service;
- b) Working for one industrial property representation service organization.

2. Any individual who satisfies the following conditions shall be granted a practice certificate of industrial property representation service:

- a) Being a Vietnamese citizen with full capacity for civil acts;
- b) Residing permanently in Vietnam;
- c) Having a university degree;
- d) Having been engaged personally in the domain of industrial property law for five consecutive years or more, or in the examination of assorted industrial property registration applications at national or international industrial property offices for five consecutive years or more, or having graduated from a training course on industrial property law recognized by the competent body;
- dd) Not being a civil servant working in the competent agency that has authority to establish and ensure the enforcement of industrial property rights;
- e) Having passed an examination on the industrial property representation profession organized by the competent agency.

3. The Government shall specifically provide for detailed programs on training in industrial property law and on examination for the industrial property representation profession, and on the grant of a practice certificate of industrial property representation service.

**Article 156. Recording and deleting names of industrial property representation service organizations; withdrawal of industrial property representation service practicing certificates**

1. Organizations and individuals who satisfy the conditions for industrial property representation service business or practice stipulated in Articles 154 and 155 of this Law shall, at their request, be recorded in the National Register of Industrial Property Representatives and published in the Official Gazette of Industrial Property by the competent authority for industrial property rights.

2. Where there are grounds to confirm that an industrial property representative no longer satisfies the business or practice conditions stipulated in Articles 154 and 155 of this Law, the competent authority for industrial property rights shall delete the name of such industrial property representative in the National Register of Industrial Property and publish such deletion in the Official Gazette of Industrial Property.

3. Industrial property representation service organizations which breach the provisions of Clause 3 of Article 152 and Article 153 of this Law shall be subject to punitive actions in accordance with law.

4. Industrial property agents who make professional mistakes during their practicing or who breach the provisions set out at Point c Clause 3 Article 152 and Point a Clause 1 Article 153 of this Law shall, depending on the nature and severity of their mistake or breach, be subject to a caution, monetary fine or withdrawal of their practicing certificate of industrial property representation service.

## **Part IV**

### **RIGHTS TO PLANT VARIETIES**

#### **Chapter XII**

##### **CONDITIONS FOR PROTECTION OF RIGHTS TO PLANT VARIETIES**

###### **Article 157. Organizations and individuals whose rights to plant varieties are eligible for protection**

1. Organizations and individuals that have rights to plant varieties protected are those that select and breed or discover and develop plant varieties or invest in the selection and breeding or the discovery and development of plant varieties or are transferred rights to plant varieties.

2. Organizations and individuals defined in Clause 1 of this Article include Vietnamese organizations and individuals; organizations and individuals of foreign countries which have concluded with the Socialist Republic of Vietnam agreements on the protection of plant varieties: foreign organizations and individuals that have permanent offices or residences in Vietnam or have establishments producing or trading in plant varieties in Vietnam: foreign organizations and individuals that have permanent offices or residences or establishments producing or trading in plant varieties in countries which have concluded with the Socialist Republic of Vietnam agreements on the protection of plant varieties.

###### **Article 158. General conditions for plant varieties to be eligible for protection**

Plant varieties eligible for protection means plant varieties which have been selected and bred or discovered and developed, are specified on the list of State protected plant species promulgated by the Ministry of Agriculture and Rural Development; and are new, distinct, uniform, stable and given a proper plant taxonomy.

###### **Article 159. Novelty of a plant variety**

A plant variety shall be deemed new if reproductive materials or harvested materials of such variety have not yet been sold or otherwise distributed for the purpose of exploitation in the territory of Vietnam by the registration right holder defined in Article 164 of this Law or his or her licensee one (01) year before the filing date of the application for registration, or for exploitation outside the territory of Vietnam six (06) years before the filing date of the application for registration for timber trees or vines, or four (4) years for other plant varieties.

###### **Article 160. Distinctness of plant varieties**

1. A plant variety will be considered distinct if it is clearly distinguishable from any other plant variety whose existence is a matter of common knowledge at the time of filing the application or the specified date on which the priority is given, as the case may be.

2. Plant varieties whose existence is a matter of common knowledge defined in Clause 1 of this Article are those falling into one of the following cases:

- a) Their reproductive or harvested materials have been widely used in the market of any country at the time of filing of the protection registration application;
- b) They have been protected or registered in the list of plant varieties in any country;
- c) They are subject matters of protection registration applications or applications for registration in the list of plant varieties in any country, provided that these applications are not rejected.

### **Article 161. Uniformity of a plant variety**

A plant variety shall be deemed uniform if, subject to variation which may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

### **Article 162. Stability of a plant variety**

A plant variety shall be deemed stable if its relevant originally described characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle.

### **Article 163. Taxonomy of plant varieties**

1. The registrant shall designate with the state management agency in charge of rights to plant varieties a proper taxonomy for a plant variety which must be the same as the taxonomy already registered for protection in any country which has concluded with the Socialist Republic of Vietnam an agreement on the protection of plant varieties.

2. The taxonomy of a plant variety shall be considered proper if it is distinguishable from those of other plant varieties of common knowledge in the same or similar species.

3. Taxonomy of plant varieties shall be considered improper in the following cases:

- a) They consist of numerals only, unless such numerals are relevant to characteristics or the breeding of such varieties;
- b) They violate social ethics;
- c) They may easily cause misleading as to features or characteristics of such varieties;
- d) They may easily cause misleading as to identifications of the breeders;
- dd) They are confusingly identical or similar to marks, trade names or geographical indications protected before the date of publication of protection registration applications of such plant varieties;
- e) They affect prior rights of other organizations or individuals.

4. Organizations and individuals that offer for sale or market reproductive materials of plant varieties shall use the denominations of such plant varieties as stated in their protection titles even after the expiration of the term of protection.

5. When taxonomy of plant varieties are combined with trademarks, trade names or indications similar to denominations of plant varieties already registered for sale offer or marketed, such denominations must still be distinguishable.

## **Chapter XIII**

### **ESTABLISHMENT OF RIGHTS TO PLANT VARIETIES**

#### **Section 1. ESTABLISHMENT OF RIGHTS TO PLANT VARIETIES**

##### **Article 164. Registration of rights to plant varieties**

1. In order to obtain protection of rights to plant varieties, an organization or individual must file an application for registration for protection with the competent authority for rights to plant varieties.
2. Organizations and individuals having the right to register plant varieties for protection (hereinafter referred to as registrants) shall include:
  - a) Breeders who have personally selected and bred or discovered and developed the plant variety by their own efforts and at their own expense;
  - b) Organizations and individuals who fund breeders to select and breed or discover and develop the plant variety by job assignment or hiring, unless otherwise agreed;
  - c) Organizations and individuals to whom are transferred, or who inherit the right to register for protection of the plant variety.
3. As for plant varieties which are selected and bred or discovered and developed with the use of State Budget funds or under projects managed by the State, the rights to such plant varieties shall belong to the State. The Government shall issue specific regulations governing the registration of rights to plant varieties stipulated in this clause.

##### **Article 165. Registration of rights to plant varieties**

1. Organizations and individuals defined in Article 157 of this Law may file applications for registration of rights to plant varieties (hereinafter referred to as protection registration applications) directly or through their lawful representatives in Vietnam.
2. Organizations that satisfy the following conditions may provide services of representing rights to plant varieties in the capacity as rights-to-plant varieties representation service organizations:
  - a) Being Vietnamese law-practicing businesses, cooperatives or organizations, scientific and technological service organizations which are lawfully established and operating, except foreign law-practicing organizations practicing in Vietnam;
  - b) Having the function of providing rights-to-plant varieties representation services as stated in their business registration certificates or operation registration certificates (hereinafter collectively referred to as business registration certificates);
3. Heads of those organizations or persons authorized by heads of those organizations who satisfy the conditions specified in Clauses 4 and 5 of this Article may provide services of representing rights to plant varieties.
4. Individuals shall be allowed to provide services of representing rights to plant varieties when satisfying the following conditions:

- a) Possessing a practice certificate of rights-to-plant varieties representation service;
  - b) Working in a rights-to-plant varieties representation service organization.
5. Individuals who satisfy the following conditions will be granted rights-to-plant varieties representation service practice certificates:
- a/ Being a Vietnamese citizen and having the full civil act capacity;
  - b) Residing permanently in Vietnam;
  - c) Possessing a university degree;
  - d) Having personally conducted legal activities related to rights to plant varieties for five or more consecutive years, or personally examined various applications for registration of rights to plant varieties in a national or international office for rights to plant varieties for five or more consecutive years, or graduated from a training course on the law on rights to plant varieties as recognized by a competent agency;
  - dd) Being other than civil servants or public employees currently working in state agencies competent to establish and secure the enforcement of rights to plant varieties;
  - e) Having passed an examination of the profession of representing rights to plant varieties, organized by a competent agency.
6. The Government shall specify lawful representatives for filing applications and rights-to-plant varieties representation service organizations.

**Article 166. "First come, first served" principle applicable to application for the protection of plant variety right**

1. Where two or more parties independently file applications for registration for protection on different days for the same plant variety, a plant variety protection certificate shall only be granted to the earliest valid registrant.
2. Where there are a number of applications for registration for protection of the same plant variety filed on the same day, a plant variety protection certificate shall only be granted to the registrant whose name is used for the filing of the sole application as agreed upon by all the other registrants. Where these registrants fail to reach agreement, the State administrative body for rights to plant varieties shall consider a grant of a plant variety protection certificate to the party deemed to be the first breeder who selected and bred or discovered and developed such variety.

**Article 167. Priority principle for application for registration of protection**

1. A registrant may claim priority right where an application for registration for protection is filed within twelve (12) months from the date of filing an application for registration for protection for the same plant variety in a country which has concluded an agreement on plant variety protection with the Socialist Republic of Vietnam. The date on which the first filing occurred shall not be included in this time-limit.
2. In order to enjoy priority right, the registrant must express the claim for the priority right in his or her application for registration for protection. Within three (3) months after filing the application, the registrant must produce copies of documents on the first application certified by the competent body and samples or other evidence proving that the variety in both applications was the same, and the registrant must pay a fee. The registrant may supply necessary

information, documents or materials to the State administrative body for rights to plant varieties for examination according to the provisions of articles 176 and 178 of this Law within two (2) years of expiry of the duration for enjoying the priority right, or within an appropriate duration depending on the species of the plant variety stated in the application after a first application is rejected or withdrawn.

3. Where an application for registration for protection is eligible for priority right, the priority date shall be the first filing date.

4. Within the time-limit stipulated in clause 1 of this article, the filing of another application or the publication or use of the plant variety the subject matter of the first application for registration for protection shall not be deemed a ground for rejecting the application for registration for protection eligible for the priority right.

### **Article 168. Plant variety protection certificates, and the National Register of Protected Plant Varieties**

1. A protection certificate for a plant variety shall state the denomination and species of such variety, the name of the owner of rights to such plant variety (hereinafter referred to as the protection certificate holder), the name of the plant variety breeder and the duration of the term of protection of rights to the plant variety.

2. The State administrative body for rights to plant varieties shall record the grant and contents of a protection certificate in the National Register of Protected Plant Varieties, and shall archive such information.

### **Article 169. Validity of plant variety protection certificates**

1. A plant variety protection certificate shall be valid throughout the entire territory of Vietnam.

2. Plant variety protection certificates shall be valid from the grant date up until the expiry of a period of twenty-five (25) years for timber trees and vines; and of twenty (20) years for other plant varieties.

3. Plant variety protection certificates may have their validity terminated or they may be invalidated pursuant to the provisions of Articles 170 and 171 of this Law.

### **Article 170. Suspension and restoration of validity of plant variety protection certificates**

1. The validity of a plant variety protection certificate may be suspended in the following cases:

a) The protected plant variety no longer satisfies the conditions of uniformity and stability as at the time of grant of the certificate;

b) The protection certificate holder fails to pay the validity maintenance fee according to regulations;

c) The protection certificate holder fails to supply necessary documents and reproductive materials for maintaining and preserving the plant variety according to regulations;

d) The protection certificate holder fails to change the denomination of the plant variety at the request of the State administrative body for rights to plant varieties.

2. In the cases stipulated at Point a, c and d, Clause 1 of this Article, the relevant competent agency for rights to plant varieties shall issue a decision on suspension of validity of the plant variety protection certificate.



3. In the case stipulated at Point b Clause 1 of this Article, upon the expiry of the time-limit for payment of the validity maintenance fee, the relevant competent authority for rights to plant varieties shall issue a decision on suspension of validity of the plant variety protection certificate as from the first day of the next valid year for which the validity maintenance fee was not paid.

4. In the case stipulated at Point a Clause 1 this Article, any organization or individual may request the competent authority for rights to plant varieties to suspend the validity of the plant variety protection certificate.

Based on the results of considering the application for suspension of a plant variety protection certificate and the opinions of relevant parties, the relevant State administrative body for rights to plant varieties shall either issue a decision to suspend the validity of the certificate or shall refuse the application.

5. In the cases stipulated in Clause 1 of this Article, the relevant competent authority for rights to plant varieties shall publish such suspension in a specialized magazine, clearly stating the reasons therefor, and concurrently send a notice about such suspension to the certificate holder.

Within thirty (30) days from the date of notification, the certificate holder may file a request for application of remedies to the reasons why validity was suspended with the competent authority for rights to plant varieties and pay the fee for restoration of validity of the plant variety protection certificate. Within ninety (90) days after the date of filing the request, the protection certificate holder must remedy the reasons why validity was suspended, applicable to the cases stipulated at Point b, c and d of Clause 1 of this Article. The competent authority for rights to plant varieties shall consider and restore the validity of the protection certificate and publish such restoration in a specialized magazine.

In the case stipulated at Point a of Clause 1 of this Article, the validity of the plant variety protection certificate shall be restored after its holder successfully proves that the plant variety has satisfied the conditions of uniformity and stability and after this has been so certified by the competent authority for rights to plant varieties.

#### **Article 171. Cancellation of effectiveness of plant variety protection certificates**

1. The effectiveness of a plant variety protection certificate shall be cancelled in the following cases:

a) The application for registration for protection of the plant variety was filed in the name of a person who did not have the registration right, except where the right to such plant variety was assigned to the holder of the registration right;

b) The protected plant variety failed to satisfy the conditions of novelty or distinctness at the time of grant of the plant variety protection certificate;

c) The plant variety failed to satisfy the conditions of uniformity or stability where the plant variety protection certificate was granted on the basis of results of technical tests conducted by the registrant.

2. During the valid term of a plant variety protection certificate, any organization or individual may request the competent authority for rights to plant varieties to cancel the effectiveness of a plant variety protection certificate.

Based on the results of the examination of a request for cancellation of effectiveness of a plant variety protection certificate and opinions of the relevant parties, the State administrative body for rights to plant varieties shall either issue a notice of refusal to cancel or shall issue a decision on cancellation of effectiveness of the plant variety protection certificate.

3. Where a plant variety protection certificate is cancelled, all transactions arising on the basis of the grant of the plant variety protection certificate shall be null and void, and such null and void transactions shall be dealt with in compliance with the Civil Code.

#### **Article 172. Amendment and re-grant of plant variety protection certificates**

1. A protection certificate holder may request the competent authority for rights to plant varieties to amend or correct errors related to the name and address of the holder, on payment of fees and charges. Where such errors were made by the State administrative body for rights to plant varieties, such body must correct such errors, and protection certificate holders shall not have to pay fees and charges.

2. A protection certificate holder may request the State administrative body for rights to plant varieties to re-grant a plant variety protection certificate when such certificate was lost or damaged, provided that the holder pays fees and charges.

#### **Article 173. Publication of decisions related to plant variety protection certificates**

Decisions on the grant, re-grant, suspension, cancellation, and amendment of plant variety protection certificates shall be published by the competent authority for rights to plant varieties in a specialized magazine on plant varieties within sixty (60) days after such decisions are issued.

### **Section 2. APPLICATIONS FOR REGISTRATION FOR PROTECTION, AND PROCESSING APPLICATIONS**

#### **Article 174. Applications for registration of protection**

1. An application for registration of protection of a plant variety right shall contain the following documents:

- a) A declaration made by filling in the given form;
- b) Photos and a technical declaration made on the stipulated sample form;
- c) Power of attorney, where the application is filed by a representative;
- d) A proof of the registration right where the registrant is a transferee of the registration right;
- dd) A proof of the priority right where the application contains a claim for such priority right;
- e) Fee or charge payment receipts.

2. Applications for registration for protection and source documents of transactions between an applicant for registration and the State administrative body for rights to plant varieties shall be made in Vietnamese, except for the following documents which may be made in another language but shall be translated into Vietnamese at the request of the State administrative body for rights to plant varieties:

- a) Power of attorney;
- b) A proof of the applicant's legal right to registration;

- c) A proof of the applicant's priority right;
  - d) Other supportive documents.
3. A proof of the priority right of an application for registration of protection of rights to a plant variety shall comprise:
- a) Copies of the first application(s) certified by the receiving agency;
  - b) A proof of transfer or inheritance of the priority right if such right is acquired from another person.
4. Each application shall be registered only for the protection of one plant variety.

#### **Article 175. Receipt of applications for registration of protection, and filing dates**

1. An application for registration of protection shall be received by the relevant competent authority for rights to plant varieties only when the application encloses all the documents stipulated in Clause 1 of Article 174 of this Law.
2. The filing date of an application shall be the date on which such application is received by the relevant State administrative body for rights to plant varieties.

#### **Article 176. Examination of the application form for registration of protection**

1. The competent authority for rights to plant varieties shall conduct an examination of an application form within fifteen (15) days of receipt of such application, in order to determine the validity of such application.
2. An application for registration of protection shall be deemed invalid in the following cases:
  - a) It fails to satisfy the formal requirements as stipulated;
  - b) The plant variety stated in such application does not belong to a plant species on the list of protected plant species;
  - c) The application is filed by a person who does not have the registration right, including where the registration right belongs to many organizations or individuals but one or more of them do not agree to register.
3. The competent agency for rights to plant varieties shall carry out the following procedures:
  - a) Notify a refusal to accept the application in the cases stipulated at Point b and c of Clause 2 of this Article, clearly stating the reasons therefor;
  - b) Notify the registrant of errors for correction in the case stipulated at Point a of Clause 2 of this Article, setting a time-limit of thirty (30) days after the receipt of the notice for the correction of such errors by the registrant;
  - c) Notify the refusal to accept the application where the registrant fails to correct errors or where the registrant does not make a reasonable appeal against the notice stipulated at Point b of this Clause;
  - d) Notify the acceptance of the application, request the registrant to provide samples of the plant variety to the testing institution for technical tests and procedures stipulated in Article 178 of this Law where such application is valid or where the registrant has properly corrected the errors or send acceptable opinions on objecting to the notice stipulated at Point b of this Clause.

### **Article 177. Publication of applications for registration of protection**

1. Where an application is accepted as valid, the State administrative body for rights to plant varieties shall publish such valid application in a specialized magazine on plant varieties within ninety (90) days from the date of acceptance of the application.

2. The published contents of an application shall include the serial number and filing date of the application, the representative (if any), the registrant, the owner, the taxonomy of the plant variety, the name of the plant species, and the date on which the application was accepted as being valid.

### **Article 178. Substantive examination of contents of applications for registration of protection**

1. The competent authority for rights to plant varieties shall conduct a substantive examination of applications already accepted as being valid. The examination shall be carried out in respect of:

- a) Examination of the novelty and proper taxonomy of the plant variety;
- b) Examination of results of technical tests of the plant variety.

2. Technical tests means experiments conducted to determine the distinctness, uniformity and stability of a plant variety.

The technical test shall be conducted by the competent authority or by an organization or individual capable of testing plant varieties in compliance with regulations of the Ministry of Agriculture and Rural Development.

The competent authority for rights to plant varieties may use previous technical test results.

3. The time-limit for examination of technical test results shall be ninety (90) days from the date of receipt of such technical test results.

### **Article 179. Amendment and supplementation of applications for registration for protection**

1. Before the relevant competent authority for rights to plant varieties notifies a refusal to grant a plant variety protection certificate or notifies its decision on grant of a plant variety protection certificate, the registrant shall have the following rights:

- a) To amend or supplement the application without changing the nature of the application;
- b) To request the recording of changes of the registrant's name or address;
- c) To request the recording of a change of registrant due to assignment of the application pursuant to a contract or as a result of inheritance or bequest.

2. The person requesting the conduct of the procedures stipulated in Clause 1 of this Article must pay fees and charges.

### **Article 180. Withdrawal of applications for registration of protection**

1. Before the relevant competent authority for rights to plant varieties decides or refuses to grant a plant variety protection certificate, the registrant may withdraw the application. A request for withdrawal of an application must be made in writing.

2. From the moment a registrant withdraws an application for protection registration, all subsequent procedures related to such application shall cease; and fees and charges already paid for procedures which have not yet been carried out shall be refunded at the request of the registrant.

#### **Article 181. Opinions of third parties on the grant of a plant variety protection certificate**

As from the date of publication of an application for registration for protection of a plant variety in a specialized magazine on plant varieties up until before a decision on grant of a plant variety protection certificate is issued, any third party shall be permitted to provide an opinion to the State administrative body for rights to plant varieties challenging the grant of such plant variety protection certificate. An opinion must be made in writing and accompanied by documents and evidence to support it.

#### **Article 182. Refusal to grant a plant variety protection certificate**

An application for protection registration shall be rejected and the grant of a plant variety protection certificate shall be refused where the relevant plant variety fails to satisfy the conditions stipulated in Articles 176 and 178 of this Law. In a case of refusal to grant a plant variety protection certificate, the competent authority for rights to plant varieties shall carry out the following procedures:

1. Notify the intended refusal to grant a plant variety protection certificate, clearly stating the reasons therefor and setting a time-limit for the registrant to correct errors or oppose the intended refusal.
2. Notify the refusal to grant a plant variety protection certificate where the registrant fails to correct errors and makes no opposition to the intended refusal stipulated in Clause 1 of this Article.
3. Carry out the procedures stipulated in Article 183 of this Law where the registrant has corrected errors or made a justifiable objection to the intended refusal stipulated in Clause 1 of this Article.

#### **Article 183. Grant of plant variety protection certificates**

Where an application for registration for protection is not rejected as provided for in Article 182 of this Law and the registrant pays the fee, the competent authority for rights to plant varieties shall issue a decision on granting a plant variety protection certificate and shall record it in the National Register of Protected Plant Varieties.

#### **Article 184 Complaints about the grant or the refusal to grant a plant variety protection certificate**

1. The registrant and any third party shall have the right to lodge a complaint about the decision or the refusal to grant a plant variety protection certificate.
2. Handling of appeals against a decision or refusal to grant a plant variety protection certificate shall comply with the law on appeals and denunciations.

### **Chapter XIV**

## **CONTENTS AND LIMITATIONS RELATING TO RIGHTS TO PLANT VARIETIES**

### **Section 1. CONTENTS OF RIGHTS TO PLANT VARIETIES**

### **Article 185. Rights of breeders of plant varieties**

The breeder of a plant variety shall have the following rights:

1. To have his or her name as the breeder recorded in the plant variety protection certificate, the National Register of Protected Plant Varieties, and published documents on the plant variety;
2. To receive remuneration pursuant to the provisions set out at Point a Clause 1 Article 191 of this Law.

### **Article 186. Rights of protection certificate holders**

1. A protection certificate holder has the right to exercise or authorize others to exercise the following rights to reproductive materials of a protected plant variety:

- a) To conduct production or propagation;
- b) To process them for the purpose of propagation;
- c) To offer them for sale;
- d) To sell them or conduct other marketing activities;
- dd) To export them;
- e) To import them;
- g) To store them for conducting acts specified at Points a. b. c. d. e and f of this Clause.

2. Rights of a plant variety protection title holder provided for in Clause 1 of this Article are applicable to materials harvested from the illegal use of reproductive materials of a protected plant variety, unless the protection title holder does not exercise his/her rights to reproductive materials though having art-opportunity to do so.

3. To prevent others from using the plant variety under Article 188 of this Law.

4. To pass by inheritance or bequeath or assign the rights to the plant variety under Chapter XV of this Law.

### **Article 187. Extension of rights of protection certificate holders**

Rights of a protection certificate holder may be extended to the following plant varieties:

1. Plant varieties which originate mainly from the protected plant variety, unless such protected plant variety itself originates from another protected plant variety.

A plant variety is considered originating from a protected plant variety if such plant variety still retains the expression of the essential characteristics resulting from the genotype or combination of genotypes of the protected variety, except differences resulting from impacts on the protected variety.

2. Plant varieties which are not definitely distinct from the protected plant variety.

3. Plant varieties the production of which requires the repeated use of the protected plant variety.

### **Article 188. Infringement of the right to a plant variety**

The following acts shall be deemed an infringement of the rights of a protection certificate holder:

1. Make use of rights of such protection certificate holder without his or her permission.
2. Use a plant variety taxonomy which is identical or similar to a plant taxonomy protected for a plant variety of the same species or a species closely linked to the protected plant variety.
3. Use a protected plant variety without paying the remuneration in accordance with Article 189 of this Law.

#### **Article 189. Provisional rights to plant varieties**

1. Provisional rights to a plant variety means rights of the registrant for protection of such plant variety, which arise from the date of publication of the application for registration for protection until the date of grant of the plant variety protection certificate. Where a protection certificate of such plant variety is not granted, the protection registrant shall not also have these provisional rights.
2. Where the registrant is aware of the fact that the plant variety registered for protection is being used by another person for commercial purposes, the plant variety protection registrant may notify in writing such user of the fact that an application for registration for protection of the plant variety has been filed, clearly specifying the filing date and the date of publication of such application, so that the user may either stop using or continue using the plant variety.
3. Where a user who has been notified in accordance with clause 2 of this article continues using the plant variety, the plant variety protection certificate holder shall have the right, upon the grant of the certificate, to demand such plant variety user pay compensation equivalent to the licensing price of such plant variety within the corresponding use scope and duration.

### **Section 2. LIMITATIONS ON RIGHTS TO PLANT VARIETIES**

#### **Article 190. Limitations on rights of plant variety protection certificate holders**

1. The following acts are not regarded as infringements of rights to protected plant varieties:
  - a) Using plant varieties for personal and non-commercial purposes;
  - b) Using plant varieties for testing purposes;
  - c) Using plant varieties to create new plant varieties, except the case specified in Article 187 of this Law;
  - d) Using harvested materials of protected plant varieties by individual production households for self-propagation and cultivation in the next season on their own land areas.
2. Rights to plant varieties are not applicable to acts related to materials of protected plant varieties which have been sold or otherwise brought into the Vietnamese or foreign markets by protection certificate holders or their licensees, except the following acts:
  - a) Acts relating to further propagation of such plant varieties;
  - b) Acts relating to export of reproductive materials of such plant varieties to countries where the genera or species of such plant varieties are not protected, unless such materials are exported for consumption purpose.

#### **Article 191. Obligations of protection certificate holders and breeders of plant varieties**

1. A protection certificate holder shall have the following obligations:

- a) To pay remuneration to the breeder of the plant variety as agreed upon; in the absence of such agreement, the remuneration level must comply with the provisions of law;
  - b) To pay the fee for maintenance of validity of the plant variety protection certificate in accordance with regulations;
  - c) To preserve the protected plant variety, to supply reproductive materials of the protected plant variety to the State administrative body for rights to plant varieties, and to maintain the stability of the protected plant variety in accordance with regulations.
2. The breeder of a plant variety shall be obliged to help the protection certificate holder to maintain reproductive materials of the protected plant variety.

## **Chapter XV**

### **TRANSFER OF RIGHTS TO PLANT VARIETIES**

#### **Article 192. Licensing of plant varieties**

1. Licensing of a plant variety means permission from the protection certificate holder granted to another person to conduct one or more acts within the holder's right to use the plant variety.
2. Where the right to use a plant variety is under co-ownership, the licensing of such plant variety to another person must be permitted by all co-owners.
3. The licensing of a plant variety must be effected in the form of a written contract.
4. A plant variety licensing contract must not contain terms which unreasonably restrict the rights of the licensee, particularly restrictions neither deriving from nor aimed at protecting the rights of the licensor to the licensed plant variety.

#### **Article 193. Rights of parties in a licensing contract**

1. The licensor shall have the right to permit or not permit the licensee to sub-license the use right to a third party.
2. The licensee shall have the following rights:
  - a) To license the use right to a third party if so permitted by the licensor;
  - b) To request the licensor to take necessary and appropriate measures to prevent infringement by a third party causing loss and damage to the licensee;
  - c) To take necessary measures to prevent a third party's infringements if, within a time-limit of three months from the date of receipt of the request stipulated at Point b this Clause, the licensor fails to act as requested.

#### **Article 194. Assignment of rights to plant varieties**

1. Assignment of rights to a plant variety means the transfer by the plant variety protection certificate holder of all rights to that plant variety to the assignee. The assignee will become the plant variety protection certificate holder from the date of registration of the assignment contract with a slate management agency in charge of rights to plant varieties according to procedures prescribed by laws.
2. In case rights to a plant variety are under joint ownership, the assignment of these rights to another person must be agreed upon by all co-owners.



3. The assignment of rights to a plant variety must be effected in the form of written contract.
4. The assignment of rights to a plant variety generated from the State budget must comply with the Law on Technology Transfer.

#### **Article 195. Bases and conditions for the compulsory licensing of plant varieties**

1. In the following cases, the rights to use a plant variety shall be licensed to another organization or individual under a decision of the competent authority defined in Clause 1 of Article 196 of this Law without permission from the protection certificate holder or his or her exclusive licensee (hereinafter referred to as the holder of the exclusive right to use the plant variety):

- a) The use of such plant variety is to serve the public interest and non-commercial purposes, or national defence and security, food security and nutrition of the people or to meet other urgent social needs;
- b) Any person who demand and has capacity to use such plant variety fails to reach agreement with the holder of the exclusive right to use such plant variety in a bid to enter into a licensing contract though they have made best efforts within a reasonable period to negotiate a satisfactory price and commercial conditions;
- c) The holder of the exclusive right to use such plant variety is deemed to have conducted anti-competitive practices prohibited by the law on competition.

2. The holder of the exclusive right to use a plant variety may request termination of the use right when the bases for licensing stipulated in Clause 1 of this Article cease to exist and are unlikely to recur, provided that termination of such use right will not be prejudicial to the licensee.

3. The right to use a plant variety licensed pursuant to a decision of a competent authority must satisfy the following conditions:

- a) Such licensed use right is non-exclusive;
- b) Such licensed use right is limited within a scope and duration sufficient to attain the licensing objective, and the protected object after being licensed is used to meet the domestic market except for the case stipulated at Point c of Clause 1 of this Article;
- c) The licensee must neither assign nor sublicense such right to others, except where the assignment of the licensee's business establishment concurrently happens and the right to use such inventions are not sublicensed to others;
- d) The licensee must pay the holder of the exclusive right to use the plant variety an acceptable compensation, depending on the economic value of such right in each case and the compensation framework stipulated by the Government.

4. The Government shall specify cases of compulsory licensing of plant varieties and the compensation price framework stipulated at Point d of Clause 3 of this Article.

#### **Article 196. Authority and procedures for the licensing of the right to use the plant variety**

1. The Ministry of Agriculture and Rural Development shall issue decisions on licensing of plant varieties within their scope of state management on the basis of considering requests for the licensing of use right in respect of cases stipulated in Clause 1 of Article 195 of this Law.

Ministries and ministerial-level bodies shall, after consulting with the Ministry of Agriculture and Rural Development, issue decisions on licensing of plant varieties within their respective state management for the cases stipulated in Clause 1 of Article 195 of this Law.

2. Decisions on the licensing of the right to inventions must specify appropriate scope and conditions of use in accordance with the provisions set out in Clause 3 Article 195 of this Law.

3. The competent agency granted an authority to issue a decision on licensing the right to use a plant variety must promptly notify such decision to the holder of the exclusive right to use the plant variety.

4. Decisions on licensing of plant varieties or refusal to license plant varieties may lead to any appeal or lawsuit as instituted by laws.

5. The Government shall provide specific regulations on the licensing of the right to use plant varieties as stipulated in this Article.

### **Article 197. Rights of protection certificate holders in cases of compulsory licensing of plant varieties**

A protection certificate holder subject to compulsorily license the plant variety shall have the following rights:

1. To receive compensation corresponding to the economic value of the licensed use right or equivalent to the licensing price under a contract with an equivalent scope and term.

2. To request the competent authority for rights to plant varieties to amend, terminate validity of or invalidate the compulsory licensing when the conditions for such compulsory licensing no longer exist and when such amendment, termination of validity or invalidation will not cause loss or damage to the licensees who gain their right from such compulsory licensing.

## **Part V**

### **PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

#### **Chapter XVI**

#### **GENERAL PROVISIONS ON PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

#### **Article 198. Self-protection right**

1. Subject of the right shall be granted the right to apply the following measures to protect the intellectual property rights of such right-subject:

a) To apply technological measures to prevent acts of infringement of its intellectual property rights;

b) To request any organization or individual who commits an act of infringement of the intellectual property rights of the holder to terminate such act, make a public apology or rectification, and pay damages;

c) To request the competent authority to deal with acts of infringement of its intellectual property rights in accordance with the provisions of this Law and other relevant laws;

d) To initiate a lawsuit at a court or a claim at an arbitration centre to protect the legitimate rights and interests of the holder.

2. Organizations and individuals who suffer any loss and damage caused by acts of infringement of intellectual property rights or who discover acts of infringement of intellectual property rights which cause any loss and damage to consumers or society shall have the right to request the competent authority to deal with such acts in accordance with the provisions of this Law and other relevant laws.

3. Organizations and individuals who suffer any loss and damage or who are likely to suffer any loss and damage caused by acts of unfair competition shall have the right to request the competent authority to take civil actions stipulated in Article 202 of this Law and the administrative actions stipulated in the law on competition.

#### **Article 199. Handling measures against the infringement of intellectual property rights**

1. Any organization or individual who commits an act of infringement of the intellectual property rights of another organization or individual shall, depending upon the nature and seriousness of such infringement, be dealt with by the application of civil, administrative or criminal punitive actions.

2. In necessary cases, the competent authority may apply provisional urgent measures and measures to control intellectual property related imports and exports, preventive measures and measures to secure enforcement of an administrative penalty in accordance with the provisions of this Law and other relevant laws.

#### **Article 200. Authority to handle infringements of intellectual property rights**

1. The following bodies shall, within the scope of their respective duties and powers, have authority to deal with acts of infringement of intellectual property rights: courts, inspectorates, market management offices, customs offices, police offices and People's Committees at all levels.

2. The application of civil and criminal measures shall fall within the authority of courts.

In necessary cases, courts may apply provisional urgent measures stipulated by laws.

3. The application of administrative remedies shall fall within the authority of inspectorates, Police offices, market management offices, customs offices and people's committees at all levels. In necessary cases, such bodies may apply preventive measures stipulated by laws or measures to secure payment of administrative fines stipulated by laws.

4. The application of measures to control intellectual property-related imports and exports shall fall within the authority of customs offices.

#### **Article 201. Intellectual property assessment**

1. Intellectual property assessment refers to the use of professional knowledge and expertise of organizations or individuals defined in Clauses 2 and 3 of this Article to assess and lead to the conclusion on matters in relation to intellectual property rights.

2. Businesses, cooperatives, public service providers or law firms, except foreign ones in Vietnam which satisfy the following conditions may be eligible to perform intellectual property assessment:

a) Hire employees and supplying technical facilities that can meet requirements for this assessment as prescribed by laws;

b) Demonstrate their competence in performing intellectual property assessment as described in their certificate of business registration, or their certificate of operation registration:

c) Ensure their heads or authorized persons possess intellectual property assessor's cards.

3. Individuals eligible to fully satisfy the following conditions may be granted intellectual property assessor's cards by competent authorities:

a) Being a Vietnamese citizen and fully capable of civil acts;

b) Permanently residing in Vietnam;

c) Hiring employees with good moral and ethical standards;

d) Holding a university's degree or higher in a relevant major or discipline that match the sector described in the assessor's card, gaining hands-on experience in such sector for the period of more than 5 years and passing the professional examination.

4. Competent agencies who have authority to handle infringements of intellectual property rights shall have the right to request intellectual property assessment when handling cases or matters under their jurisdiction.

5. Intellectual property right holders and other related organizations and individuals may request intellectual property assessment to protect their legitimate rights and interests.

6. The Government shall provide detailed regulations on intellectual property assessment organizations and their activities.

## **Chapter XVII**

### **APPLICATION OF CIVIL MEASURES IN DEALING WITH INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS**

#### **Article 202. Civil measures**

Courts may apply the following civil measures in dealing with organizations and individuals who have committed acts of infringement of intellectual property rights:

1. Compulsory termination of the infringing acts.

2. Compulsory public apology and rectification.

3. Compulsory performance of civil obligations.

4. Compulsory payment of damages for loss.

5. Compulsory destruction, distribution or use for non-commercial purposes of goods, raw materials and facilities used largely for the production or trading of goods which infringed intellectual property rights, provided that such destruction, distribution or use will not affect the exploitation of rights by intellectual property right-holders.

#### **Article 203. Litigant's right and burden of proof**

1. The plaintiff and the defendant to a lawsuit regarding infringement of intellectual property rights shall have the right and bear the burden of proof stipulated in Article 79 of the Civil Procedure Code and this Article.

2. The plaintiff must prove that he is the holder of the intellectual property right by producing one of the following forms of evidence:

- a) Copies of the copyright registration certificate, related right registration certificate or protection certificate; or an extract of the National Register of Copyright and Related Rights, the National Register of Industrial Property or the National Register of Protected Plant Varieties;
- b) Necessary evidence proving the basis for establishment of copyright or related rights in the absence of a copyright registration certificate, related right registration certificate; necessary evidence proving the right to a trade secret, trade name or well-known mark;
- c) Copy of the license contract for an intellectual property object where the use right is licensed under a contract.

3. The plaintiff shall bear the burden of proving acts of infringement of intellectual property rights or acts of unfair competition.

4. In a lawsuit regarding infringement of the right to an invention which is a production process, the defendant shall bear the burden of proving that the product of the defendant was produced by a process other than the protected process in the following cases:

- a) The product manufactured by the protected process is brand-new;
- b) The product manufactured by the protected process is not new, but the invention owner believes that the product of the defendant is manufactured by the protected process and fails to identify the process used by the defendant in spite of having applied appropriate measures.

5. Where a party to a lawsuit regarding infringement of intellectual property rights can prove that appropriate evidence proving such party's claim is under the control of the other party and is therefore inaccessible, the former party shall have the right to request the court to compel the latter party to produce such evidence.

6. When making a claim for compensation for damages for loss, the plaintiff must prove the plaintiff's actual loss and damage and specify the basis for determining the amount of compensation for damages in accordance with Article 205 of this Law.

#### **Article 204. Principles for determining loss and damage incurred by an infringement of intellectual property rights**

1. Loss and damage incurred by acts of infringement of industrial property rights shall comprise:

- a) Material loss and damage including property loss, a drop in income and profit, loss of business opportunity, and reasonable expenses for mitigating such damage or loss;
- b) Non-material loss and damage including damage to honor, dignity, prestige, reputation and other spiritual loss caused to authors of literary, artistic and scientific works; to performers; to authors of inventions, industrial designs, layout designs; and to breeders of plant varieties.

2. The extent of damage shall be determined on the basis of actual losses suffered by intellectual property right holders due to acts of infringement of intellectual property rights.

#### **Article 205. Bases for determining amount of damages incurred by an infringement of intellectual property rights**

1. Where the plaintiff proves that an act of infringement of intellectual property rights has caused the plaintiff's material damage, the plaintiff shall have the right to request the court to decide the amount of damages in one of the following bases:

- a) Total material damage calculated in an amount of money plus profit gained by the defendant as a result of the act of infringement of intellectual property rights, where the reduction in profit amount of the plaintiff has not yet been included in such total material damage;
- b) The price of the licensing of an intellectual property object on the assumption that the defendant would be licensed by the plaintiff to use that object under a licensing contract within a scope corresponding to the act of infringement which was committed;
- c) Where it is impossible to determine the amount of damages in terms of material damage on the bases stipulated at Point a and b of this Clause, such amount of damages shall be set by the court depending on the extent of loss but do not exceed five hundred million Vietnamese dong (VND 500,000,000).

2. Where a plaintiff proves that the act of infringement of intellectual property rights caused the plaintiff spiritual damage, the plaintiff shall have the right to request the court to decide on the amount of damages, depending on the extent of loss, which may vary from five million Vietnamese dong (VND 5,000,000) to fifty million Vietnamese dong (VND 50,000,000).

3. In addition to the amount of damages stipulated in Clauses 1 and 2 of this Article, an industrial property right-holder shall also have the right to request the court to compel the organization or individual who have committed the act of infringement of industrial property rights to pay reasonable costs of hiring a lawyer.

#### **Article 206. Right to request the court to apply provisional urgent measures**

1. Upon or after the initiation of a lawsuit, an intellectual property right holder shall have the right to request the court to apply provisional measures in the following cases:

- a) In a danger of irreparable damage to such intellectual property right holder;
- b) Goods suspected of infringement of intellectual property rights or evidence related to the act of infringement of industrial property rights are likely to be dispersed or destroyed unless they are protected in time.

2. A court may make a decision applying provisional urgent measures at the request of an industrial property right holder as stipulated in Clause 1 of this Article before hearing the party subject to such measures.

#### **Article 207. Provisional urgent measures**

1. The following provisional urgent measures may be applied to goods suspected of infringing upon intellectual property rights or to raw materials or facilities of production or trading of such goods:

- a) Retention;
- b) Distrain;
- c) Sealing; prohibiting any alteration of the original state; prohibiting any movement;
- d) Prohibiting transfer of ownership.

2. Other provisional urgent measures may be applied in accordance with the Civil Procedure Code.

#### **Article 208. Obligations of petitioners for provisional urgent measures**

1. Petitioner for provisional urgent measures shall bear the burden of proving their right provided for in Clause 1 of Article 206 of this Law by producing the documents and evidence stipulated in Clause 2 of Article 203 of this Law.

2. A petitioner for provisional urgent measures shall be obliged to pay compensation for loss caused to a person subject to such measures in a case where the latter is found not to have infringed upon industrial property rights. To secure the performance of this obligation, a petitioner for provisional urgent measures shall give a pledge in one of the following forms:

a) A sum of money equal to twenty (20) per cent of the value of the goods subject to the application of provisional urgent measures, or at least twenty million Vietnamese dong (VND 20,000,000) where it is impossible to value such goods;

b) A deed of guarantee issued by a bank or other credit institution.

#### **Article 209. Cancellation of application of provisional urgent measures**

1. The court shall issue a decision to cancel the application of provisional urgent measures in the case stipulated in Clause 1 of Article 122 of the Civil Procedure Code or in a case where the person subject to such measures proves that such application was unfounded.

2. In a case of cancellation of a provisional urgent measure, the court shall consider refunding the petitioner a pledge stipulated in Clause 2 of Article 208 of this Law. Where a request for the application of a provisional urgent measure was unfounded which may thus cause loss to the person subject to such measure, the court shall compel the petitioner to pay compensation for such loss.

#### **Article 210. Authority and procedure concerning the application of provisional urgent measures**

The authority and procedure concerning the application of provisional urgent measures shall adhere to the provisions of Chapter VIII, Part One of the Civil Procedure Code.

### **Chapter XVIII**

## **HANDLING OF INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS BY APPLICATION OF ADMINISTRATIVE AND CRIMINAL MEASURES; CONTROL OF INTELLECTUAL PROPERTY-RELATED IMPORTS AND EXPORTS**

### **Section 1. HANDLING OF INFRINGEMENTS OF INTELLECTUAL PROPERTY RIGHTS BY THE APPLICATION OF ADMINISTRATIVE AND CRIMINAL MEASURES**

#### **Article 211. Infringements of intellectual property right subject to administrative penalties**

1. Organizations and individuals that commit any of the following acts of infringing upon intellectual property rights shall be subject to administrative penalties:

a) Infringing upon intellectual property rights which causes damage to authors, owners, consumers or society;

b) Producing, importing, transporting or trading in intellectual property counterfeit goods defined in Article 213 of this Law or assigning others to do so;

c) Producing, importing, transporting, trading in or storing stamps, labels or other articles bearing a counterfeit mark or geographical indication or assigning others to do so.

2. The Government shall specify acts of infringing upon intellectual property rights which shall be subject to administrative penalty, penalty type and fine rates, and procedures.

3. Organizations and individuals that commit acts of unfair competition in intellectual property shall be administratively fined under the competition law.

### **Article 212. Acts of infringement of industrial property rights which shall be subject to criminal penalties**

Any individual who commits an act of infringement of intellectual property rights involving a criminal element shall be criminally prosecuted in accordance with the criminal law.

### **Article 213. Intellectual property counterfeit goods**

1. Intellectual property counterfeit goods regulated in this Law comprise goods bearing counterfeit marks and goods bearing counterfeit geographical indications (hereinafter referred to as counterfeit mark goods) defined in Clause 2 of this article and pirated goods defined in Clause 3 of this Article.

2. Counterfeit mark goods means goods or their packages bearing a mark or sign which is identical with or indistinguishable from a mark or geographical indication currently protected for those very goods, without permission from the mark owner or organization managing the geographical indication.

3. Pirated goods means copies made without permission from the copyright holder or related right holder.

### **Article 214. Forms of administrative penalty and mitigation**

1. Organizations and individuals that commit acts of infringing upon intellectual property rights defined in Clause 1 Article 211 of this Law shall be compelled to terminate their infringements and subject to one of the main penalty type as follows:

a) Caution;

b) Fine.

2. Depending on the nature and seriousness of their infringements, intellectual property rights-infringing organizations or individuals are also subject to either of the following additional penalties:

a) Confiscation of intellectual property counterfeit goods, raw materials and means used mainly for the purpose of production or trading of these intellectual property counterfeit goods;

b) Suspension of business activities in domains where infringements have been committed.

3. In addition to the penalties specified in Clauses 1 and 2 of this Article, intellectual property rights infringers are also subject to either or both of the following mitigation efforts:

a) Compulsory destruction or distribution or use for non-commercial purposes of intellectual properly counterfeit goods as well as raw materials and means used mainly for production or



trading of these intellectual property counterfeit goods, provided that the destruction, distribution or use does not affect the exploitation of rights by intellectual property right-holders;

b) Compulsory transportation out of Vietnamese territory of in-transit goods infringing upon intellectual property rights or compulsory re-exportation of intellectual property counterfeit goods, as well as imported means, raw materials and materials used mainly for production or trading of these intellectual property counterfeit goods, after infringing elements have been removed from these goods.

4. Fine rate and authority to impose administrative sanctions against infringements of intellectual property rights shall comply with the law on handling of administrative violations.

#### **Article 215. Preventive measures and/or measures to secure enforcement of administrative penalties**

1. In the following cases, organizations and individuals shall have the right to request the competent authority to apply preventive measures and/or measures to secure enforcement of the administrative penalties stipulated in Clause 2 of this Article:

a) An act of infringement of intellectual property rights is likely to cause serious loss and damage to consumers or society;

b) Material evidence of the infringement is likely to be dispersed or there are indications that the offender will evade responsibility;

c) Enforcement of a decision imposing an administrative penalty must be guaranteed.

2. Preventive measures and/or measures to secure enforcement of administrative penalties which may be applied in accordance with administrative procedures to acts of infringement of intellectual property rights shall comprise:

a) Temporary detention;

b) Temporary custody of infringing goods, material evidence and facilities;

c) Frisk search

d) Searches of means of transport and objects; searches of places where infringing goods, material evidence and facilities are hidden;

dd) Other administrative preventive measures in accordance with the law on dealing with administrative breaches.

#### **Section 2. CONTROL OF INTELLECTUAL PROPERTY RELATED IMPORTS AND EXPORTS**

##### **Article 216. Measures to control intellectual property related imports and exports**

1. Measures to control intellectual property related imports and exports shall comprise:

a) Suspension of customs procedures for goods suspected of infringing intellectual property rights;

b) Inspection and supervision to detect goods showing signs of infringing upon intellectual property rights.

2. Suspension of customs procedures for goods suspected of infringing upon intellectual property rights means a measure to be taken at the request of an intellectual property right-holder in order to collect information and evidence on the goods consignment in question so that the intellectual property right holder may exercise the right to request that the infringing act be dealt with and to request the application of provisional urgent measures, preventive measures and/or measures to secure enforcement of administrative penalties.

3. Inspection and supervision to detect goods showing signs of infringing upon intellectual property rights mean a measure to be taken at the request of an intellectual property right holder in order to collect information for the exercise of the right to request suspension of customs procedures.

4. If any intellectual property counterfeit goods described in Article 213 of this Law are found in the course of application of the measures stipulated in Clauses 2 and 3 of this Article, the customs office shall have the right and responsibility to apply administrative remedies to deal with such goods in accordance with Articles 214 and 215 of this Law.

#### **Article 217. Obligations of petitioners for the application of measures to control intellectual property related imports and exports**

1. A petitioner for application of a measure to control intellectual property related imports or exports shall have the following obligations:

- a) To prove that the applicant is an intellectual property right holder by producing the documents and evidence stipulated in Clause 2 of Article 203 of this Law;
- b) To supply sufficient information to identify goods suspected of infringing upon intellectual property rights or to detect goods showing signs of infringing upon intellectual property rights;
- c) To file a written request to the customs office and to pay fees and charges stipulated by laws;
- d) To pay damages and other expenses incurred to persons subject to control measures in a case where the controlled goods are found not to have infringed upon industrial property rights.

2. In order to secure the performance of the obligation stipulated at Point d of Clause 1 of this Article, a petitioner shall provide a pledge in one of the following forms:

- a) A sum of money equal to twenty (20) per cent of the value of the goods consignment subject to the application of the measure of suspension of customs procedures, or at least twenty million Vietnamese dong (VND 20,000,000) where it is impossible to value such goods;
- b) A deed of guarantee issued by a bank or other credit institution.

#### **Article 218. Procedures for application of the measure in suspending customs procedures**

1. When persons requesting the suspension of customs procedures have fulfilled their obligations specified in Article 217 of this Law, customs offices shall issue decisions on suspension of customs procedures with regard to goods parcels in question.

2. The duration of suspension of customs procedures is ten working days after the petitioner for suspension of customs procedure receives the customs office's notice of such suspension. In case the petitioner for suspension of the customs procedure gives a justifiable reason for failure to complete these procedures, this duration may be prolonged but does not exceed twenty working

days, provided that the petitioner leaves a pledge as prescribed in Clause 2, Article 217 of this Law.

3. Upon the expiration date specified in Clause 2 of this Article, if the petitioner for suspension of customs procedure does not file a civil lawsuit and customs offices decide not to accept the cases for handling of administrative violations of goods parcels of exporters or importers according to administrative procedures, customs offices have the following responsibilities:

- a) To continue carrying out customs procedures for goods parcels in question;
- b) To compel the petitioner for suspension of customs procedures to compensate all the damage caused to owners of goods parcels due to their unreasonable petition, and pay expenses for the warehousing and preservation of goods as well as other expenses incurred by customs offices and other related agencies, organizations and individuals under the customs law;
- c) To refund to the petitioner for suspension of customs procedure the remaining amount of pledge after the obligation of paying compensations and expenses specified at Point b of this Clause is fulfilled.

### **Article 219. Inspection and supervision to detect goods suspected of infringement of intellectual property rights**

Where an intellectual property right-holder requests inspection and supervision to detect goods showing signs of infringement of intellectual property rights and the customs office then finds such a goods consignment, the customs office shall promptly notify the petitioner thereof. If the petitioner does not request the suspension of customs procedures with regard to the offending goods consignment and the customs office does not issue a decision to consider the application of the administrative penalties stipulated in Articles 214 and 215 of this Law within a period of three working days from the date of notification, then the customs office must continue carrying out customs procedures for the goods consignment in question.

## **Part VI**

### **EXECUTION PROVISIONS [37]**

#### **Article 220. Transitional provisions**

1. Copyright and related rights protected under legal documents which took effect before the effective date of this Law continue to be protected under this Law if they remain in the term of protection by that date.
2. Applications for registration of copyright, related rights, inventions, utility solutions, industrial designs, trademarks, appellations of origin of goods, layout-designs or plant varieties, which have been filed with competent agencies before the effective date of this Law, continue to be processed under legal documents effective at the filing time.
3. All rights and obligations specified in protection certificates under the provisions of law which comes into force before the effective date of this Law and procedures for maintenance, renewal, modification, invalidation, licensing, ownership assignment, settlement of disputes relating to these protection certificates are governed by this Law, except grounds for invalidation of protection certificates which are subject to the provisions of law which are effective at the time of grant of these protection certificates. This provision also applies to decisions on registration of appellations of origin of goods issued under the provisions of law which come into force before

the effective date of this Law. State management agencies in charge of industrial property rights shall carry out procedures for the grant of geographical indication registration certificates in respect of appellations of origin of goods.

4. Trade secrets and trade names which have been existing and protected under the Government's Decree No. 54/2000/ND-CP of October 3, 2000, on the protection of industrial property rights to trade secrets, geographical indications, trade names and the protection of the right to repression of industrial property-related unfair competition, continue to be protected under this Law.

5. From the effective date of this Law, geographical indications, including those protected under the Decree mentioned in Clause 4 of this Article, may only be protected after they are registered under this Law.

#### **Article 221. Entry into force**

This Circular has come into force as from July 01, 2006.

#### **Article 222. Implementation guidelines**

The Government and the Supreme People's Court shall providing instructions on the implementation of this Law./.

**CERTIFIED BY  
PRESIDENT**

**Nguyen Hanh Phuc**

[1] The Law No. 36/2009/QH12 amends several provisions of the Law on Intellectual Property with promulgation bases as follows:

*“Pursuant to the Constitution of the Socialist Republic of Vietnam in 1992 that has been changed and amended under the Resolution No. 51/2001/QH10; the National Assembly promulgates the Law on amendments and adjustments to several provisions of the Intellectual Property Law No. 50/2005/QH11.”*

[2] This Article is amended in accordance with the regulation set out in Clause 1 Article 1 of the Law No. 36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[3] This Article is amended in accordance with the regulation set out in Clause 2 Article 1 of the Law No. 36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[4] This Article is amended in accordance with the regulation set out in Clause 3 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[5] This Article is amended in accordance with the regulation set out in Clause 4 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[6] The phrase “the Ministry of Culture – Information” is replace with “the Ministry of Culture, Sports and Tourism” in accordance with the regulations set out in Article 2 of the Law No. 36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[7] The phrase “the Ministry of Culture – Information” is replace with “the Ministry of Culture, Sports and Tourism” in accordance with the regulations set out in Article 2 of the Law No. 36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[8] The phrase “the Ministry of Culture – Information” is replace with “the Ministry of Culture, Sports and Tourism” in accordance with the regulations set out in Article 2 of the Law No. 36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[9] The phrase “the Ministry of Culture – Information” is replace with “the Ministry of Culture, Sports and Tourism” in accordance with the regulations set out in Article 2 of the Law No. 36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[10] This Article is amended in accordance with the regulations set out in Clause 5 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[11] This Article is amended in accordance with the regulations set out in Clause 6 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[12] This Article is amended in accordance with the regulations set out in Clause 7 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[13] This Article is amended in accordance with the regulations set out in Clause 8 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[14] This Article is amended in accordance with the regulations set out in Clause 9 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[15] This Article is amended in accordance with the regulations set out in Clause 10 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[16] This Article is amended in accordance with the regulations set out in Clause 11 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[17] This Article is amended in accordance with the regulations set out in Clause 12 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[18] The phrase “the Ministry of Culture – Information” is replace with “the Ministry of Culture, Sports and Tourism” in accordance with the regulations set out in Article 2 of the Law No. 36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[19] The phrase “the Ministry of Culture – Information” is replace with “the Ministry of Culture, Sports and Tourism” in accordance with the regulations set out in Article 2 of the Law No. 36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[20] This Article is amended in accordance with the regulations set out in Clause 13 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[21] This Article is amended in accordance with the regulations set out in Clause 14 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[22] This Article is amended in accordance with the regulations set out in Clause 15 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[23] This Article is amended in accordance with the regulations set out in Clause 16 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[24] This Article is amended in accordance with the regulations set out in Clause 17 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[25] This Article is amended in accordance with the regulations set out in Clause 18 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[26] This Article is amended in accordance with the regulations set out in Clause 19 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[27] This Article is amended in accordance with the regulations set out in Clause 20 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[28] This Article is amended in accordance with the regulations set out in Clause 21 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[29] This Article is amended in accordance with the regulations set out in Clause 22 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[30] This Article is amended in accordance with the regulations set out in Clause 23 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[31] This Article is amended in accordance with the regulations set out in Clause 24 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[32] This Article is amended in accordance with the regulations set out in Clause 25 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[33] This Article is amended in accordance with the regulations set out in Clause 26 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[34] This Article is amended in accordance with the regulations set out in Clause 27 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[35] This Article is amended in accordance with the regulations set out in Clause 28 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[36] This Article is amended in accordance with the regulations set out in Clause 29 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

[37] Article 3 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010 sets out the following regulations:

**“Article 3**

*1. This Law shall come into force from January 01, 2010.*

*2. The Government shall provide detailed instructions on the implementation of binding provisions of the Law; and provide guidance on other necessary contents in this Law in order to meet the Government’s demand for state management.”*

[38] This Article is amended in accordance with the regulations set out in Clause 30 Article 1 of the Law No.36/2009/QH12 on amending several provisions of the Intellectual Property Law taking effect as from January 01, 2010.

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